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JOINT COMMITTEE ON THE AUSTRALIAN CRIME
COMMISSION

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

THURSDAY, 5 JULY 2007

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

Thursday, 5 July 2007

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

Members in attendance: Senators Mark Bishop, Ian Macdonald, Parry and Polley and Mr Hayes

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 9.03 am

HARRIS, Mr Craig Anthony, Assistant Secretary, National Law Enforcement Policy Branch, Attorney-General's Department

HERIOT, Dr Dianne, Acting First Assistant Secretary, Criminal Justice Division, Attorney-General's Department

HOLLAND, Mr Keith Colin, First Assistant Secretary, Security and Critical Infrastructure Division, Attorney-General's Department

LOWE, Ms Jamie, Assistant Secretary, AusCheck, Attorney-General's Department

MARKEY, Mr Lionel Wayne, Director, Telecommunications and Surveillance Law Branch, Attorney-General's Department

SMITH, Ms Catherine, Assistant Secretary, Telecommunications and Surveillance Law Branch, Attorney-General's Department

WALTER, Mr Andrew Kenneth, Acting Assistant Secretary, Criminal Law Branch, Attorney-General's Department

WEBLING, Mr Alexander D'Arcy, Senior Adviser E-Security Strategy, Critical Infrastructure Protection Branch, Attorney-General's Department

CHAIR (Senator Ian Macdonald)—I declare open this public hearing of the Parliamentary Joint Committee on the Australian Crime Commission and its inquiry into the future impact of serious and organised crime on Australian society. This is the last but one of the committee's hearings in the inquiry into the future impact. The terms of reference are available on the committee's website and from the secretariat staff here. We have had meetings so far in Perth, Melbourne, Brisbane and Sydney. Our proceedings today will follow a program that I understand has been circulated to everyone. These are public proceedings. The committee may agree to a request to have any evidence heard in camera and may determine that certain evidence should be heard in camera.

All witnesses, I think—certainly this lot—will be aware that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to the committee. Members of the committee will be aware that the Senate has resolved that an officer of a department of the Commonwealth or a state should not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about how and when policies were adopted.

With those formalities over, I welcome witnesses from the Attorney-General's Department. Your submission to the committee was very comprehensive and we very much thank you for that

and for assisting the committee with its inquiry. Mr Holland, do you have an opening statement, a summary or an explanation you might like to start with?

Mr Holland—No, Chair. We decided not to make an opening statement but rather to give the committee the opportunity to ask questions of the fairly extensive team that we have here. Hopefully, we will be able to assist you in your inquiry.

CHAIR—Thank you. There have been some suggestions from other witnesses that Australia is well behind other countries in having an effective national criminal investigation database. The Police Federation, for example, have recommended that CrimTrac be fully developed as the national criminal investigation database serving the ACC, the AFP and state and territory police forces and having the capacity to provide access to risk related data nationwide, including things like criminal records, DNA profiles, gun and explosives licences, aviation and maritime licences, chemical and fertiliser purchases, and child sex offenders registers. Do you consider this is, first of all, necessary; and, secondly, whether it is possible, practical and feasible?

Mr Holland—The issues you have raised were, as you may be aware, the subject of some consideration by Mr Peter Ford, who carried out an inquiry for the department based upon the recommendation of the Wheeler review into aviation security. The first recommendation of that review was that the Attorney-General's Department undertake a comprehensive examination of Commonwealth, state and territory law and practices to ensure that there were no inhibitors to the exchange of information between agencies.

Mr Ford undertook that review, and one of his conclusions was that primarily the inhibitor to the exchange of information was a cultural one rather than a legislative one. While in his report he did make some recommendations about changes to legislation, he focused more upon the fact that there were cultural inhibitors to this exchange of information that ran across a range of issues such as the reluctance of agencies to share information either because of a silo mentality or because of their concern about how the information that they exchanged would be dealt with and the lack of guarantees that the information would be treated appropriately. These were some of the issues that he raised.

But one of the recommendations that came out his report was that you could overcome a lot of these difficulties by, firstly, addressing the cultural issues and, secondly, by looking at the databases that were currently in existence and developing interconnectivity between the databases. He raised issues in relation to privacy and so forth about establishing a single database that would hold all of this information, and his recommendation mirrored that of Sir John Wheeler's that the ACID database should be the one that should be primarily focused on in terms of information sharing.

In terms of information sharing, there are already a number of databases that deal with the issues the Police Federation raised. For example, through CrimTrac police already have access to criminal records, DNA profiles, firearms licensing details and registered child sex offenders. Aviation and maritime licences are currently being addressed in the context of AusCheck, and chemical and fertiliser purchases are being considered in the COAG context.

CHAIR—When you say they are being addressed, what do you mean? You said the aviation and maritime licences and chemical and fertiliser purchases were being dealt with. What do you mean by ‘dealt with’?

Mr Holland—In the sense that, in coming up with a process of dealing with the people who have those licences, the one in relation to aviation and maritime access is being considered and is being dealt with in the government’s response by setting up AusCheck. We have somebody here from AusCheck who can help the committee understand what they are doing. In the COAG context, run through PM&C, they are looking at this issue of fertiliser and those who have licences for fertiliser.

CHAIR—But will they be brought together on the one database?

Mr Holland—No. In the CrimTrac case they are there, but, in terms of the other two databases, they will not be on a single database in conjunction with the CrimTrac one. That is my understanding.

Mr HAYES—So, for tracking the importation of precursor chemicals, what you are suggesting there probably still does not help us?

Mr Holland—If you are looking at setting up a single database, the answer to that is yes. My colleagues might be able to assist in that regard.

Ms Lowe—With regard to the role of AusCheck and the bringing together of checks in relation to the aviation and maritime industries, with the establishment of AusCheck, CrimTrac will be coordinating the national criminal history checks on people applying for aviation and maritime security identification cards. CrimTrac will be a central checking agency for those two industries; whereas at the moment that is being done by the AFP. So that is a new feature of the AusCheck system—that CrimTrac will have an active and ongoing role in background checking for the aviation and maritime security industries.

Mr HAYES—That is for all persons who are going to work on an aerodrome?

Ms Lowe—The term is that they have an operational need to have regular access to a secure zone at either an airport or a marine port. That is effectively the bulk of the people that will be working at airports and marine ports.

Mr HAYES—Having worked with SAPOL for some time myself, and in regard to the operators at the airport casualising their workforces, I suppose in response to commercial needs, Qantas and other players there are moving strongly to having more casualised activity there. In terms of ASICs and all the rest of it, about: how does that work collaboratively to support that commercial position?

Ms Lowe—Certainly being a casual worker or a contractor or working for an airline or an airport in any capacity does not inhibit you from obtaining an ASIC if you have that operational need to access a secure area, irrespective of the form which your employment has taken. That is no inhibitor to obtaining an ASIC or an MSIC. Industry work with the Department of Transport and Regional Services to develop a transport security plan for their particular venue or service,

depending on what their operational requirements are. As part of that plan, they identify the types of positions within their business that will require that person to hold an ASIC or an MSIC. So the fact that a person is casual or on a contract basis does not inhibit them from obtaining an ASIC.

Mr HAYES—For instance, a heavy vehicle driver, whether it be of a cement truck or whatever, possibly two or 2½ years ago would access the airport by simply going to a gate and handing over his or her driver's licence and would pick up the driver's licence when they went back. In terms of that sort of database and what we are doing with ASIC, that sort of information would not be captured?

Ms Lowe—I cannot comment on the licence information for casual visitors, for infrequent visitors. That is a matter for the Department of Transport and Regional Services to work out with industry in relation to the transport security plan. So, if there is a driver who requires that ongoing access, they would be required to obtain an ASIC; otherwise, if they were required on an occasional basis to enter a secure zone, they would have to receive a visitor card and be escorted at all times. Anyone entering a secure zone, unless they are an ASIC holder, cannot enter unescorted. That is the situation for temporary or occasional visitors.

Mr HAYES—That has always been the position as I understood it, but I know at first hand that that is not exactly what occurred, whether you were doing maintenance around a jumbo jet or anything like that, where you can bring in a concrete truck by simply handing over a driver's licence. I am just worried: do we capture all that necessary information? Do we vet it? Because, quite frankly, any crook can get a crook driver's licence.

Ms Lowe—The AusCheck database is a database of information about applicants and holders of ASICs and MSICs. Industry is required to fill out a register for people that they have issued a visitor card to, including identity information. The degree to which that occurs is a matter for the Department of Transport and Regional Services, because they do have a monitoring, auditing role in relation to that function.

CHAIR—Do the Department of Transport and Regional Services, who are appearing before us tomorrow—and we can ask them a lot of these questions—make the decisions here, or does it come down from the security agencies?

Ms Lowe—Could you just explain what you mean by 'decision'? Which decision?

CHAIR—On who gets in, whether a driver's licence is sufficient and whether it should be on a database. Who makes those decisions?

Ms Lowe—Depending on which decision, at different stages—

CHAIR—In the instance that Mr Hayes raises—

Ms Lowe—Of an individual entering.

CHAIR—about cement truck drivers coming in.

Ms Lowe—It is the industry people who make the decision on a day-to-day basis, on an operational, ongoing basis, about whether somebody enters or not—

CHAIR—So you mean Qantas or Virgin?

Ms Lowe—That is right, in accordance with whatever transport security plan they have in place with the Department of Transport and Regional Services.

CHAIR—So it is the Department of Transport and Regional Services who approve it, not what you might say are the purer security agencies of the Commonwealth?

Ms Lowe—The transport security plan, yes. The Department of Transport and Regional Services approve it—I would expect with consultation with relevant agencies, but under the transport legislation it is their responsibility to approve those transport security plans.

Senator PARRY—Mr Holland, you might want to respond. Is there any coordinating, overarching response to all forms of security, in particular access to what we call sensitive sites? We hear now that there is a department that will handle one issue concerning access to airports based on a plan developed by the organisation. Is this where we are falling down? Is this where we need some overarching coordination of all forms of data? Who would lead that? Is it the Attorney-General? Is it a matter for agencies coming together in some form of agreement? How is it going to happen so we end up with a coordinated approach rather than this department for this, this agency for that?

Mr Holland—A lot of the databases are held by the states and the territories. The purpose of the Ford review, the first review, was to respond to Wheeler and ask, ‘What is the problem that’s inhibiting the exchange of information between these databases and between agencies?’ Having identified the cultural aspect as a problem, then there is a need to deal with that. More significant is the concept of interconnectivity between the databases so that you have databases talking to each other and people are able to interrogate, without the idea of one huge, overarching, monolithic database that holds all of the information on everyone. Mr Ford was asked to do a second report, which he has done, in which he talks about the practical ways of doing that. So he has gone around and spoken to all of the agencies, looked at what their databases do, and come back with practical suggestions as to how they might make sure that there are no gaps—that they can interconnect. But it will still require the agencies to approach it in a very different way.

Senator PARRY—Who will coordinate this? Who will run it? Who will drive it?

Mr Holland—The concept is being done through the NCTC as tasked by the COAG. A subcommittee of the NCTC chaired by Tasmania is looking at the issue.

Senator PARRY—Highlighting the non-connectivity or the databases not talking to each other, a gentleman who murdered a woman in New South Wales was picked up in Queensland—it was in yesterday’s media—for a routine traffic accident or traffic matter and released without any Queensland police officer realising there was a warrant for his arrest issued in New South Wales. That is just a one-off example. I am sure it would happen day in, day out—and that is without getting into the realms of security clearances at different establishments. How soon do

you see this coordinated approach of databases communicating with databases interagency being completed?

Mr Holland—I am not in a position to say what the time line is at the moment. I am happy to take that on notice and talk to Tasmania and see what their view is. A very broad time line is looking at reporting back to NCTC at least in the middle of next year. The point you raised highlights the problem, but getting to the cause of the problem is the difficulty. It may not just be the interconnectivity of the databases. It goes to the mindsets and the cultural issues, and certainly a number of the agencies around the NCTC table at the meeting here last year recognised that those cultural problems need to be addressed. Mr Ford's first report dealt with some of the cultural issues and how you might go forward in breaking down the barriers. It goes to being concerned about how your information will be dealt with and what is going to happen to it. How will it be secured when somebody else has it? Those are the sorts of issues that need to be dealt with.

Senator PARRY—Do think there is any interagency jealousy guarding their own information, which has been hard won and fought for and put onto a database? Do you think that intelligence is guarded?

Mr Holland—In his original report Mr Ford spoke about the silo concept, and that certainly is one of the cultural elements that he identified that needed to be broken down.

Senator MARK BISHOP—Pursuing the same issue, Mr Holland, I refer you to your submission on page 21. The third paragraph has a discussion on the concept of a national security database:

AGD considered this proposal ... An assessment of the proposal revealed that it would have significant privacy, policy and legislative implications and would require substantial resources and time to develop. It was concluded that there are other ways to more quickly and effectively improve the sharing of information and intelligence between jurisdictions and agencies.

Are the objections that are referred to—privacy, policy and legislative—objections to a national and centralised database accessible by authorised agencies or is the issue simply one of process, interconnectedness and cost, time and resource allocation? What is the in-principle objection?

Mr Holland—It is a combination of all of those factors. If you go back to the originator of all of this, which was the Wheeler review, and work your way through it, there are a combination of factors. Yes, it certainly is a combination of the things that I have referred to earlier. Once you get into that space and talk about how you deal with them, is setting up a single national database—all-encompassing, all dancing and singing—necessarily the answer to the problem? If it is a cultural issue, no because the database still relies upon agencies to input into it. If they are not going to do that for one reason or another, the other people who are interacting with that database will not know, and it is not going to solve the problem.

Senator MARK BISHOP—We will stop there. You have raised two issues: one is cultural and the second is some apparent agency reluctance to involve themselves. What exactly are the cultural problems with, firstly, establishing a national centralised database and, secondly, the issues of accessing it? Why would the Tasmanian police force or the Western Australian security

apparatus not want to participate, be involved, access it and use it for a range of their chartered responsibilities? What is the cultural problem?

Mr Holland—The cultural problems are: an unwillingness to share the information; a concern about how that information will be dealt with; and a concern with how that information will be stored. It is those sorts of cultural problems that he identified.

CHAIR—I find it, as Senator Bishop obviously does, incredible that serious, sensible adult people who are probably much cleverer than any of us on this committee have these sorts of fiefdoms of information—they have got the information and they are not going to give it to anyone else. You said earlier too that they thought it would not be treated appropriately. Can you elaborate? I am not asking for your view; I am asking you to explain to the committee.

Senator MARK BISHOP—Whilst you are answering Senator Macdonald's question, the reason I pursue it and he asks it is that every time I or we have a private or public meeting with police forces or intelligence agencies or those involved in law enforcement who do some of the more dirty work that has to be done they go out of their way to get hold of people like us—and you see it replete in submissions here—wanting national databases, uniform access, centralised access. I have never had a copper say to me yet that he does not want not to be able to access a national database. They all say without exception that that will help them carry out their work. I have never heard the idea that coppers or intelligence agencies do not want to have access, so tell me about it.

Mr Holland—The basis of my statement to the committee is Mr Ford's report. He went around and spoke to all these people. He does not cite individual agencies and what they said; they were the conclusions of his report.

CHAIR—These are not trick questions. It is just that we find it difficult. Is the Queensland police force worried that the Victorian police force will not keep their information secure, or are they worried that they might get the arrest instead of the Queensland police force?

Mr HAYES—Is this linked not so much to agencies as to state and territory governments? The Police Federation come before us later today. They represent 99 per cent of all sworn cops in this country and this is precisely what they are asking for. This follows on from the position that Mark has just put to you. The position of those involved in law enforcement, through their peak body, is that this is what they want. I understand what Ford has said in his review but if no-one knows what underpinned his views, if we cannot substantiate them, how do we sit in trying to explain that to others? Simply putting this all down to a cultural inhibition about sharing this information is inconclusive when those who represent sworn cops—the vast majority, 99 per cent of sworn cops—are all saying that that is what they want.

Mr Holland—Firstly, I cannot obviously answer in terms of the specifics when you talk about the state police forces. All I can do is refer to the general conclusions that Mr Ford came to in his inquiry. This notion of a single database has been considered by heads of Commonwealth law enforcement agencies and by the National Counter-Terrorism Committee and they have decided not to go down that route but rather to explore the concept of using existing databases and the interconnectivity between those databases.

Senator MARK BISHOP—There is competition there. You say they do not want to have a national or centralised database but they want to resolve problems of interconnectivity and access. The latter, interconnectivity and access, presupposes some sort of national or uniform basis to interconnect to or access. So it does not appear to be an in-principle objection.

Mr Holland—Not necessarily, because the states and territories would still have control over their databases. They would have control over those who had access to those databases, as I understand, through the interconnectivity mechanisms. It is not as though they are taking their information and downloading it onto another database and not having any knowledge of who is having access to that and what they are doing with it.

Mr HAYES—There is also the DNA database. That is the way it occurs, isn't it?

Mr Holland—No, I am not sure of that. I could not answer that. We are talking about information and intelligence. The ACID database is intelligence sharing and, clearly, you are talking about classifications there and national security classifications. The concern that raises is whether the persons accessing that have the necessary clearances. When we were talking about the issues you raised, Senator, that was certainly one of them. The CrimTrac database is about information, and not intelligence. I think we need to draw that distinction and then you can see, to a certain extent, why there are concerns. If you are going to link both of those and put them into a national database, the issues that have been raised in the context of intelligence sharing become issues of paramount concern for some organisations.

CHAIR—Obviously, the people who talk about this and come to these conclusions know more about it than the committee does. I think the committee is struggling with this and, as a simple matter of common sense, this does not seem relevant. You may not be the people to ask, mind you; perhaps we should be asking others. Is there a concern that some members of agencies around the country—police forces or other agencies—are in league with the bad guys so therefore they should not get access to this information?

Mr Holland—I have not seen any suggestion of that, Senator, not at all. It is an issue of breaking down the barriers. There is an acknowledgement at the highest levels both within government and within the law enforcement agencies—the NCTC being an example where they are represented at the highest levels—that, yes, this does need to happen. There is absolutely no doubt in anybody's mind that there needs to be this exchange of information. The question then becomes—

CHAIR—So we all agree.

Mr Holland—how best to do that. It is not just a simple answer because—going back to cultural issues again and to break them down—there are other things you need to do. For example, there is the classification of documents. People need to give some thought to whether they are over-classifying documents and thereby preventing access to those documents on the grounds of classification. Another issue is: if I am going to have information, then there has to be no reluctance on my part as an individual, or the local policeman on the beat, to feed that information into the system.

CHAIR—Why would there be reluctance?

Mr Holland—I am not saying there is. I am simply saying that if you are defining what the cultural issues are even the police themselves acknowledge that there are cultural issues that need to be addressed—

CHAIR—Is it that the different state databases are in a different technical form and therefore cannot be cheaply integrated? It requires a lot of money and, perhaps, in the end it comes down to question of what is the best use of resources—is that it?

Mr Holland—I think the second report that Mr Ford has done goes to those sorts of issues, the very practical issues of: if you go down the interconnectivity route, how do you do this; what other ways are there of doing it; what are the inhibitors and how do we get rid of those inhibitors? Those are the issues that are currently being addressed within the subcommittee of the NCTC that is chaired by Tasmania. While I am not an expert in the technical stuff they are some of the things that would inhibit the interconnectivity. There are within jurisdictions some legislative rules as to how you can handle information—who can look at it and who deals with it. Those things have to be looked at on a local level to determine whether it is really necessary to restrict it. So it is not just one issue; it is a whole range of issues. There is an acknowledgement at the highest levels of government, within COAG and at the highest levels of the operational agencies within the context of the NCTC, that this needs to happen.

Senator POLLEY—I heard comments from the committee in relation to the process that you have put to us and the reasons why a national database has not happened. I think we are missing the point though. The Australian community at this point in time are looking for law enforcement agencies to combat organised crime. If we do not get it, if we do not understand in plain English why it is not happening, it is very hard for us to go back to our communities and try to explain to them why taxpayers' money is not working to their best advantage.

Mr Holland—I certainly would not want anyone to leave this room with the impression that it is not happening. We are not saying that at all. There were flaws in the system that were found by Sir John Wheeler and he was talking only about the aviation sector. It was COAG who said to the NCTC: 'You need to look broader than that.' It is in that context that this thing has snowballed in terms of 'Okay, but moving outside those parameters what are we finding?' There are problems, but it is working. People are talking to each other. Agencies are reacting with each other. The question is: how can you streamline the flow of information in the data age that we have at the moment? They are the technical things that people are looking at. Yes, there are cultural problems. You can break them down but you will not break them down completely. You cannot have a technical problem that cannot be solved in this sense. They are working towards: if you do not have the cultural problems, are there any inhibitors in the electronic exchange of this information? It also includes looking at the legal issues that surround that from legislation as to who can and who cannot access information and the privacy regime.

Senator PARRY—Is there an architect—a person or a group of individuals, rather than departments—who is managing this process that you have just highlighted?

Mr Holland—Ultimately, it is NCTC.

Senator MARK BISHOP—These databases exist in the various states. They are accessed by the various agencies as part of their routine work. Your submission refers to privacy concerns.

Are they new privacy concerns or are they privacy concerns that perhaps agencies from New South Wales or an officer from a New South Wales agency might be accessing information held on a Victorian database?

Mr Holland—I will have to take that one on notice and get back to you on that.

Senator MARK BISHOP—You do not know the nature of the privacy concerns?

Mr Holland—Off the top of my head, I would say that it is the whole gamut of the privacy regimes that operate in this area and the fact that there would clearly be some concerns by the privacy groups about all of the information about individuals being held on one single database. I think it would be this concept of a monolithic database that holds, if you take the six database sets that the police association has identified. There would be concerns about all of that information being held on a single database that a very large number of people would be able to access at any one time through a single action.

Senator MARK BISHOP—What is the difference between officers of one particular agency accessing personal information in pursuit of a criminal investigation or intelligence matter within the law and within privacy constraints and that being done by two or three different states? What is the heart of the privacy concern?

Mr Holland—I do not think that is the problem. The problem is that all the data is being held on a single database; that is the difference.

Senator MARK BISHOP—We have all the data being held on one national database, and you tell me there are privacy concerns about that. How is that in principle different to all of the data being held in six different locations—that is, six separate databases—and being accessed? What is the heart of the privacy concern?

CHAIR—By everybody.

Mr Holland—I am not sure that I have an answer to that question. I will have to take that on notice, but I think it is more the concept than the reality.

CHAIR—Is it that individual states have individual privacy legislation that is not compatible?

Dr Heriot—Certainly different jurisdictions have different privacy regimes. There are also issues of the purpose for which personal information was collected and concerns around possible data matching. They would all go to the underlying privacy.

There are different audit and accessibility requirements, say, for access to Victorian databases by the Victorian Ombudsman to do audits and also for how that might be managed. There is also the time period within which certain information may be required to be destroyed if it had been collected or a certain reason. There is a nexus of issues. Certainly, gathering personal records in an administrative database for one purpose and then using them for an entirely different purpose would create privacy issues. I am not sure if you have been talking to the federal Privacy Commissioner, but those sorts of issues are grappled with. There are certainly ways that law

enforcement can get exemptions. Arrangements can be put in place but there is a process that has to be gone through.

Mr HAYES—I understand what you said and I think it is correct. I think the Commonwealth played a good role in terms of, for instance, development of the DNA database. It is not a Commonwealth function although they funded it to the tune of about \$50 million on the basis that the states would bring down model legislation. But when they all signed off on it they did not bring down identical legislation. That is why we had the hiccups in the Peter Falconio case; the way people took the DNA was inadmissible in a court in another territory. Various things have occurred like that. I understand those things, but I think—and I would like your feelings on this—that there is a role for the Commonwealth in taking further leadership in coordinating law and order matters. To some extent it is a matter of buying in because there would not necessarily be a constitutional power to exercise here. But, when it does involve COAG, I think that we need to have some common applications, particularly with serious crime that does not know geographic boundaries. With phone tapping, for instance, at the moment we do not tap phones in the ACT and in Queensland. That is like giving a brochure to crooks telling them that they are good places to organise their crime bases.

Is there a role for the Commonwealth to take? I do not necessarily mean with a common criminal code, although I know that probably 12 or 13 years ago each of the states and territories signed off with the Commonwealth to move towards the development of a common criminal code, and it has been slowly emerging crime by crime. But whilst we have all these great ideas when we get these ministers together, when it comes to getting it down to an operational sense for the coppers who are out there fighting the bad guys, we are very slow at coordinating it. I think that, largely, what the PFA was looking at in its submission was how we could give the police the tools necessary to fight serious contemporary crime.

Mr Holland—I will ask my colleague to comment about telecommunications interception because I think that is important.

CHAIR—We want to move on to that shortly but first I want to finish with databases.

Mr HAYES—Is there a role for the Commonwealth to further buy in to the coordination of the application of state databases or to their administration, as we do now with CrimTrac? I know that a lot of what CrimTrac does involves the application of state databases coming together. Certainly there are issues with state privacy provisions. But if we are going to do these things it should be incumbent that we bring down model and supporting legislation when the states sign off. It is fortunate that the Commonwealth can take leadership by funding the administration of these databases.

CHAIR—I think what is needed is for the Commonwealth to buy its way in, as we did in the DNA databases, but across a broader range as need be. I am not sure why we do not change the Constitution to get rid of state boundaries when we are fighting crime—that is a more radical solution. Is the solution that the Commonwealth buy its way in to regularise the privacy laws of each state or to set up model legislation in conjunction with the states? Is that a fair summation?

Mr Holland—If it is the privacy issue that you are talking about I think—and I stand to be corrected here—that there was an attempt to get a national regime but it was not successful.

CHAIR—All right. Perhaps that is something the committee might comment on to help you people and the police force. Can we leave off dealing with the databases directly, although we may touch on them again. We have heard evidence about two issues. One was the Queensland phone taps. I have spoken to the Attorney and he said that it is a work in progress, but could you update us on where that is up to? The other issue that concerns me is that there are no control actions in the ACT, as I understand it. Could you update us on where those approaches are up to?

Ms Smith—I would first like to clarify that you can intercept anywhere in Australia. It is a national law whereby law enforcement agencies, such as the Australian Crime Commission or the Australian Federal Police, can intercept in Queensland. The Australian Federal Police certainly have powers to intercept and they do intercept in ACT policing in the ACT. There is only one police force, the Queensland Police Service, that does not have interception powers. The Queensland Crime and Misconduct Commission also does not have interception powers. We are currently working with our colleagues in the Queensland Attorney General's department and we are working our way forward to look at interception powers for the Queensland police. Essentially it is a national piece of legislation, so is up to the Queensland government to enact legislation that has reporting requirements that are consistent with the Commonwealth act. That is a matter of who will oversight the interception regime. For example, in the Commonwealth sector it is the Commonwealth Ombudsman, in New South Wales it is the New South Wales Ombudsman, et cetera. That is the issue we are currently discussing with our counterparts in Queensland.

CHAIR—The concern of the committee, when we heard this from the Queensland police, was that every other police force has the right. Queensland could have the right on the same basis but they are requiring a different set of rules to every other state; is that correct?

Ms Smith—Yes, that is correct. This is Commonwealth legislation, so every state is subject to the same requirements, which are the basis on which they obtain warrants, the reporting that they have to undertake and the use of that information.

CHAIR—Queensland wants a public interest monitor—

Ms Smith—That is correct.

CHAIR—As I understand it, it depends upon when the monitor works. I understand that the Commonwealth has no problem if it is after the event, but Queensland want it before the event, which—

Ms Smith—They want it during the event. There is no prohibition of them utilising anyone in the process for which they develop an affidavit and an application to go before an AAT member or a Federal Court judge. Where there is no flexibility in the legislation as it currently stands, a third party needs to come into that process. At the moment the act requires that a law enforcement agency approach either the AAT or the Federal Court and it is a judicial decision as to whether that warrant is issued. Bringing in a third party to then appear before an AAT member or a Federal Court judge is not actually provided for in the legislation. There is no issue with a public interest monitor working with the Queensland police, if that is what they want to do, to look at the basis of applications. The Queensland government has put in legislation which

oversights after the fact to ensure that the accountability regimes have all been adhered to, like the Commonwealth Ombudsman does. So it is within their power to appoint that work.

CHAIR—We might just leave the other part of my question for the moment. Did anyone else have any questions on telephone intercepts?

Mr HAYES—When we spoke to the New South Wales Police Commissioner, he indicated to us the extraordinary costs associated with getting the audio from any of the phone companies now that has been deregulated. He said that the costs are horrendous for targeted operations. There is no Commonwealth legislation that requires, firstly, cooperation and, secondly, that you must supply the information. He indicated to us that, in a budgetary sense, this is a serious consideration for fighting crime and suggested that we should be bringing down some form of regulation that requires compliance such that, for certain triggered events, telephone companies must supply information on request.

Ms Smith—There is a very robust legislative framework within the Telecommunications Act. There is also currently a bill before parliament, the Telecommunications (Interception and Access) Amendment Bill 2007, which is looking at moving those aspects of the Telecommunications Act into the Telecommunications (Interception and Access) Act, which my branch administers, and that is the framework for which industry have to provide reasonable necessary assistance, which is either executing a warrant, obtaining call associated data—the kind of who called who. There is something which my branch administers called an interception capability plan, whereby every carrier—and I understand at the moment there are about 166 live carriers in Australia—has to provide a document to the agency coordinator that spells out exactly the kind of assistance they will provide to all of the intercepting agencies. They are falling due now, and we are looking at the assistance that they will give.

The Telecommunications Act provides a cost structure—that is that neither the carrier nor the agency shall profit or lose from providing this assistance. The difficulty is that a big provider may have a lot of business with the agencies and they can keep their costs down. At the smaller end of town, where we are requiring a small provider to develop interception capability to keep records that need to be accessed by law enforcement, they may only have five employees, so the cost to obtain that information from that provider is much higher than it might be from some of the bigger providers.

There is also—and I do not know whether DCITA or ACMA are appearing before you—an arbitrating role that the Australian Communications and Media Authority have whereby an agency can go to ACMA and seek for them to review the costs they are being charged. Essentially, we encourage all of the agencies—and this is beyond police forces; this is like Centrelink and tax—to work together when they negotiate contracts with the carriers to pay for fees. It is within a carrier's right to charge for someone to come out at midnight on a weekend and pay them the normal rates that would be charged and pass those fees onto a law enforcement agency. To date, certainly in this financial year, I am not aware that anyone has gone to ACMA to complain about charges—

Mr HAYES—I do not think they have gone there to complain, but it is interesting that those responsible for running law enforcement at state levels, commissioners of police, are

complaining about budgetary implications in terms of budgets allocated to fighting serious organised crime.

Ms Smith—We strongly support the work of law enforcement and we work with the providers to try and keep costs to a minimum. As new technologies come out, there is more research needed within those providers to work out how they can best assist law enforcement, so industry is putting a lot of resources into this as well.

Senator MARK BISHOP—Ms Smith, you referred to the information that the carriers will provide. Did I detect in your answer that they have discretion as to the information they will provide or do they have to work to a set of regulations or a template and the only discretion is the manner in which they provide it?

Ms Smith—The person who has the discretion is sitting to my right—Mr Holland, the agency coordinator. After a submission is received from a provider, he can go to all of the agencies—there are currently 15 intercepting agencies—and seek their views on whether we should grant an exemption to a particular carrier because it is unlikely that their services would be needed and that sort of thing. There is no discretion whatsoever for any member of the industry for the assistance they have to provide. They must provide reasonable necessary assistance, which includes the execution of a warrant, and provide the information that they have in relation to telecommunications services. Our agencies sometimes get concerned that maybe a particular industry player does not create records that would be useful. Whether there should be further obligations upon industry is clearly a matter of policy that we are looking at and working on with the communications department.

Senator MARK BISHOP—We had some criticism in Western Australia from the police force, I think it was, in getting access to information from a set of unspecified carriers. We raised it in Victoria, and Ms Nixon, the commissioner down there, said it was not an issue. Is what was occurring in Western Australia correct or is it a problem across states that police agencies or interception agencies are being denied access to information by carriers?

Ms Smith—No. My understanding is that it is certainly a national approach and it is coordinated by the Attorney-General's Department and through ASIO. If there are any concerns, they should be brought to us. If any agency were refused, all agencies would be refused. Every single carrier has an obligation equally to all.

Senator MARK BISHOP—Nothing has been brought to you?

Ms Smith—Nothing has been raised like that.

Senator MARK BISHOP—Are you familiar with the evidence in Western Australia?

Ms Smith—No, I am not familiar with the case you are talking about, but if it could be provided to me it is something I am happy to take on.

Senator MARK BISHOP—It is on the public record. It was denied in Victoria, but it was raised in Western Australia, so it might have been an aberration over there.

Ms Smith—I will speak to my colleagues in Western Australia.

Senator MARK BISHOP—Will you take it on notice?

Ms Smith—Certainly.

CHAIR—Does your department deal with the Crimes Amendment (Controlled Operations) Act? Is that your area?

Dr Heriot—Yes. We will do our best to answer.

CHAIR—I do not want to ask the questions. Perhaps I will do that in camera. I just want to know whether you oversee it.

Mr Walter—If you are referring to the controlled operations regime at the Commonwealth level which is currently in the Crimes Act, then yes, my branch administers it. A bill that is currently before the Senate, the Crimes Legislation Amendment (National Investigative Powers and Witness Protection) Bill, introduces model controlled operations provisions, and we are responsible for that bill as well.

CHAIR—I might leave it there. I am reluctant to go in camera because it is too much hassle. We might write to you about an issue that was raised with us.

Mr Walter—If the secretary contacts me, I am more than happy to look into any question you have.

Mr HAYES—One of the things that has been raised, not only during this inquiry but in former inquiries as well, is involvement of outlaw motorcycle gangs, particularly in relation to amphetamine and other illicit drug trade. In this inquiry they are now being looked at for their involvement in serious organised crime. Some of the states are looking at enacting laws to prohibit people being members of or being associated with such gangs. Is there a role for the Commonwealth to bring down model regulation or model legislation so that each state would have similar control, as is being proposed in New South Wales, over outlaw motorcycle gangs? I know that this issue was first raised in Western Australia some time back in the way that outlaw motorcycle gangs were dealt with, but I do not know that it has ever been followed through with. I know in New South Wales the ACC said the other day that they intended going down this legislative route. Is there any great utility in one state doing it as a one-off as opposed to the Commonwealth showing some leadership in requiring or requesting, in simple terms, states to bring down model legislation?

Dr Heriot—It seems that the issue of outlaw motorcycle gangs is one of some salience nationally and internationally. There are a range of legislative and operational arrangements in place at the Commonwealth and state and territory levels, as well as work from the Crime Commission on this issue. When the Ministerial Council for Police and Emergency Management—Police met last week in New Zealand they agreed to establish a senior officers working group to look at this very issue and to do an analysis of the measures that are currently in place nationally and also in New Zealand, because New Zealand will be part of this process—which is excellent considering their experience—to make recommendations on proposals that

might enhance policy and legislative responses and to identify potential gaps in law enforcement activities or arrangements. A body of work on that very issue is in train. That working group will be paying close attention also to any considerations and recommendations that may come out of this committee. The working group will also liaise closely with the ACC taskforce in this regard. Minister Johnston put out a press release last week, which I am happy to table, around the establishment of the working group.

Mr HAYES—There is one thing that strikes me as a little odd. Obviously, the Attorney-General's Department in New South Wales have gone some distance in proposing what they have. There is little utility in doing these things as a one-off, but we are going to duplicate everything. I do not know what sorts of time lines that we are looking at, but the issue of outlaw motorcycle gangs has been around for some time. Either we bite the bullet and bring down laws that prohibits membership and association of bodies involved in serious and organised crimes or alternatively we approach them as we do now, which is in an ad hoc manner as they come across our various pieces of criminal law or criminal codes.

Dr Heriot—The desire to avoid duplication and instead develop the very best possible response is why the working group has been formed. The contribution of New Zealand and the various Australian jurisdictions will drive to that outcome, since various approaches have been taken and it will be good to get a consolidated look at that and also an analysis of where the gaps may be. I am sorry; I cannot give you a timeline for that. The meeting was on Thursday. I imagine that it will move expeditiously.

Mr HAYES—Okay. Thank you.

Senator PARRY—You have touched upon the Proceeds of Crime Act 2002 in the submission. I will ask several questions and that might result in a comprehensive answer. Have there been any complaints about the structure of the act? Does it need any amendment or any further clarification—for example, on how, when the Commonwealth has an interest and states are also involved, the Commonwealth can receive the proceeds of crime where there are any? Do you think that it creates any potential conflict between federal and state agencies—and, for that matter when it has overseas implications, between Australian and international agencies—over who is going to collect the proceeds?

Dr Heriot—As you would probably be aware, there was an independent review of the Commonwealth Proceeds of Crime Act 2002 conducted by Mr Tom Sherman, which was tabled in October last year. The report stood as a strong endorsement of the act, it would be fair to say. It showed that, for example, recoveries under the act were 45 per cent higher than average annual recoveries under the 1987 act and that there was a progressive build up of recoveries under the act—it basically doubled each year. He felt that that trend would continue. It is difficult. Because the act has not been in place very long, some proceedings are still happening under the 1987 act. With the nature of court proceedings, it will take a while to gain legs. Mr Sherman made some recommendations on ways in which the confiscation scheme could be made more effective. That report is currently under consideration. I note that various suggestions around proceeds have also been made in some of the submissions to this inquiry, so we will also look to that.

Senator PARRY—Have you had any complaints from any agency concerning the current working of the act?

Dr Heriot—I think the agencies have identified areas for improvements, and I think they have been echoed in Mr Sherman's report, but part of the process of legislative reform is that there are generally areas of improvement identified, and that is how we go about it. In terms of potential for conflict with the states and territories, the Commonwealth act does have equitable sharing provisions to enable proceeds of crime to be shared on the basis of contributions to recovery of proceeds or significant contributions to the law enforcement operation. We have those provisions for state governments. We have made an equitable sharing contribution, for example, to the Queensland government, and there are provisions to have similar sharing of proceeds with foreign governments. Payments have been made under equitable sharing to Indonesia and to China, most recently. I understand—though I am by no means an expert on this—that some state jurisdictions, but not necessarily all, may have equitable sharing arrangements for their proceeds.

Senator PARRY—That is fairly comprehensive, thank you. So overall it is working and, apart from the need for some minor modifications, it seems to be a fairly good act and instrument to work under.

Dr Heriot—Certainly Mr Sherman's report would indicate it is a robust mechanism. We expect, as time goes on and more actions are commenced, that the proceeds it manages to garner will increase, but again there are always areas in which function can be improved, and we are looking at that at the moment.

Senator MARK BISHOP—I want to ask about SIM cards in mobile phones. Is your department giving any consideration, or are you were aware of any consideration being given, to a national registration of SIM cards at point of purchase, as for landlines?

Ms Smith—The telecommunications providers actually have an obligation under the current legislation, under the Telecommunications Act, to register all telephone numbers under something called an IPND database, which is administered by Telstra. That should provide information regarding a telephone number and its subscriber. You are possibly talking about those prepaid SIMs.

Senator MARK BISHOP—I am, yes.

Ms Smith—Because it is a deregulated telecommunications market, the obligation has been placed upon industry to come up with how that area is regulated. There is a determination that was put out in 2000 by the then ACIF that talked about the information that should be captured at the point of sale when one of these cards was sold. The difficulty is that there is no regulation of who can sell those SIM cards. Even though an obligation may be placed on the main telecommunications providers who provide them, they are sold at the local garage, at Woolworths and so on, so the obligation might fall upon a checkout person, who is very busy, to take down certain details and that sort of thing. Currently the Australian Mobile Telecommunication Association, AMTA, is developing a new format which is to be used by all providers and to be passed on to the third parties who are selling the SIM cards, to obtain more useful information at point of sale. There is also consideration that when SIM cards are sold people should ring a certain number and have to provide more information and that there would

be a requirement that that information be provided back to the telco and then be accessible for law enforcement purposes. As I said, there has been a system in place since 2000, but it certainly has many faults. In the Law Enforcement Advisory Committee, which is chaired by ACMA, we have been working very hard for a number of years to come up with a better system. We expect that—I think in July this year—AMTA will be putting out a new draft way to deal with these prepaid SIMS. So something is being done.

Senator MARK BISHOP—So you are aware of the issue, it has been under review for a number of years, AMTA is chairing an industry committee to try to work out a better way and you expect a set of recommendations to come down in July?

Ms Smith—That is what I expect.

Senator MARK BISHOP—Do we expect recommendations on black letter law or more guidelines for retailers at point of sale as to what they should capture?

Ms Smith—Because this falls into the self-regulation aspect of the Telecommunications Act, we anticipate there will be guidelines for industry but there will be an amendment to the determination.

Mr Markey—With regard to the program, ACMA initiated a program that started this month. The first phase of the program is getting the point of sale documents out to the public and an education program. There will be 12 months of evaluation of the education program and then a review after that on how the program is progressing.

Senator MARK BISHOP—I gained the impression from evidence given by the police forces that they were more interested in an explicit obligation being placed upon the retailer at point of sale to capture certain information and for that to be located centrally so that they would be able to access it as they access information relating to landlines. I am hearing you say that, in the case of readily accessible SIM cards, we are going into a self-regulation mode of behaviour and not down a path of capturing information in the hard way that has been the case for registration of landlines.

Mr Markey—There is a certain statement within the point of sale document which relates to the actual person giving personal information. If they give misleading or incorrect information, it is a breach of the Criminal Code. There was discussion within AMTA—

Senator MARK BISHOP—Mr Markey, I am aware of those arguments. Coppers told us people buy SIM cards in their dozens or hundreds and change them in the phone half a dozen times a day. They might only use a SIM card once and then put in a new one for serious buying and selling of drugs and that sort of material. Has the regime that AMTA is considering been signed off by the various police forces in terms of their desires?

Ms Smith—Certainly we had the participation of law enforcement on the committee that looked at this and they are happy with the process that we are currently looking at.

Senator MARK BISHOP—There are two things. Are they happy with the—

Ms Smith—They are happy with the proposal. The enforcement issue is going to be the next phase that we will moving to. There are a couple of levels. One is that we are placing more pressure on industry to update the centralised database that does exist for fixed line phones, mobile telecommunications and in fact any way that we can communicate with each other. The pressure is there. By placing pressure on the providers, we are hoping that they will then push for these third parties that sell them to meet their obligations.

Senator MARK BISHOP—Hoping, but not mandating or directing?

Ms Smith—Yes, to some extent. What we are doing on the legislative front—

Senator MARK BISHOP—Are you saying yes to ‘hoping, but not mandating or directing’?

Ms Smith—Because it is self-regulation, that is correct.

Senator MARK BISHOP—Understood.

Ms Smith—I was just going to say that, in the regulation side, we are looking at other ways to deal with the swapping of SIM cards at the actual point of interception.

Senator MARK BISHOP—It is not just criminal activity that applies to intelligence.

Ms Smith—Indeed.

Senator MARK BISHOP—It is information as well, which is quite pertinent considering the developments in the last two or three days.

Ms Smith—Indeed. I can say that it is one of our highest priorities.

Senator MARK BISHOP—I also have some questions on fraud in internet banking. Chair, can I shift to that or do you want to stay on this?

CHAIR—Just on this issue, some evidence has been given to us that the voice over internet protocol—VoIP—is a continuing problem. Is there any approach that the Commonwealth can take to try to address that? I do not know if it is addressable.

Ms Smith—Indeed. Because the nature of both the Telecommunications (Interception and Access) Act and the Telecommunications Act is technologically neutral, we have not had to amend either of those acts to apply to voice over internet protocol. The acts treat them in the same way, therefore the providers have those obligations that they currently have in relation to a fixed line phone to assist, to intercept and to provide us with the call associated data. We are looking at the challenges that faces, dealing with providers that are not very big in the market, those that are offshore—

CHAIR—Are you saying that you can address that?

Ms Smith—Yes, in the current legislative framework.

CHAIR—Can it be addressed technically as well? Are you able to answer that?

Ms Smith—I would not want to disclose any capabilities, but it is something that we are focusing on.

CHAIR—That is fine.

Senator MARK BISHOP—I just want to shift to finance fraud via the internet. I have had personal experience where my own credit card was misused. I contacted the agency at the relevant bank and they just asked me to fill out a form and a fortnight later they just reimbursed the fraud that had occurred on my particular account without any great rigmarole at all. I was quite surprised how easily it was remedied. There was a suggestion either in a background document or in one of the submissions—I cannot recall which—that there was an alarming increase in finance fraud on banks and other financial institutions over the internet, primarily through improper access to passwords, pass codes, people tapping into their line to their own bank or whatever. The suggestion was that currently the financial institutions treat it as a cost and where a complaint is made they just reimburse the embezzled amount. There was also a suggestion that the incidence and the quantum of moneys being fraudulently converted is increasing exponentially and the financial institutions are looking to shift that cost away from themselves to the Commonwealth. Is your agency doing any work in this area to identify the incidence and the level of fraud on financial institutions over the internet? Are you engaged in any dialogue with institutions as to appropriate remedies?

Dr Heriot—I would suggest that that might be a useful question to put to the Institute of Criminology when it appears because it has fraud as one of its research priorities, and that would include e-crime. In fact they have done some survey work in that area so they may be better placed to answer that. Certainly they are better placed than I am to look at the quantum or trend issues. There is government-industry engagement at an operational and policy level around the range of the issues that you have raised and, as you know, these costs are currently worn by the financial institutions. They are also looking at a range of measures to improve the rigour of their identification systems—

Senator MARK BISHOP—And their own security—

Dr Heriot—Yes.

Senator MARK BISHOP—Is A-G the peak agency here or is it another Commonwealth body?

Mr Webling—I would just like to expand on what Dr Heriot has said in terms of what the Attorney-General's Department and also a whole series of agencies are doing about, as you would describe it, the increasing risks of being on the internet and banking and suchlike. The government has taken a very holistic view of these in that it is trying to work with both the banks, as the owners of large systems which are on the internet, and with the users, as in you and me on the internet, and also small and medium enterprises.

The government, in the recent budget, announced \$73.6 million towards a broad range of e-security strategies. Some of these will address the issues that you are obviously concerned

about—and the government is as well. One of the things that the Attorney-General's Department is responsible for is something called the Trusted Information Sharing Network for Critical Infrastructure Protection. There is a banking and finance group which is one of the nine sector groups that we deal with. We are working with them to try to improve the protection of their systems.

We are also, through DCITA—and I do not know whether DCITA is appearing—working to try and help home users and small and medium enterprises through something called StaySmartOnline and a whole series of other initiatives in terms of education to try to help the users protect themselves. Generally the problems are not with the banking systems themselves; they are with the interaction between the user and their computer and the bank. There are obviously some issues there. The government has taken this seriously and is trying to work with the banks and improve the level of knowledge of the users and the general public on these issues.

Senator MARK BISHOP—With regard to my question about quantum and trends and developments in this area, do you rely on the Australian Institute of Criminology for your research or do you commission that type of work in-house?

Mr Webling—I defer to Dr Heriot, but I am aware that the Australian Institute of Criminology have received some money from the proceeds of crime to conduct a very large survey, and they are in the pilot phase of that.

Senator MARK BISHOP—So they are doing some work. Does A-G's commission that work internally as well?

Dr Heriot—We have tended to get the institute to do it because it is its area of specialisation. The institute also works cooperatively with the Crime Commission and with the Australian High Tech Crime Centre on some more operational research that would also inform this work. On the area of community education around safe use of the internet and that sort of thing, I should also note that, under the Treasury portfolio, there is the Australasian Consumer Fraud Taskforce, which was established in 2005. It comprises 18 government and regulatory agencies across Australia and New Zealand, and it has a scam watch every March, which is to raise public awareness of the various emails and other scams that you might get.

Senator MARK BISHOP—That is fine. I did not want to get into the solutions at this stage. Just one final question: do you have any hard information on the level, incidence and growth of e-fraud against finance institutions?

Mr Webling—We do not have any specific information. I think what we would say is that the general threats to anybody on the internet, whether that is a user or an SME or a company, are increasing.

Senator MARK BISHOP—As a general proposition?

Mr Webling—As a general proposition. But I would not be able to give you a number.

Senator MARK BISHOP—So you do not have any hard empirical data and, apart from the work that is to be done by the Australian Institute of Criminology, you have not as yet

commissioned any work on the hard data of the incidence, trend and significance of e-fraud growth?

Mr Webling—We have been sponsoring for the last four years, I believe, AusCERT, the Australian Computer Emergency Response Team, based in the University of Queensland, to conduct a computer crime survey. In a lot of ways, the work that the Australian Institute of Criminology is doing at the moment can be seen as a much bigger version of that. A lot of the data that has been in the AusCERT survey can be, hopefully, trended into this larger survey. But in terms of a very hard quantitative survey, I do not think we could actually say that we have done any of that.

Senator MARK BISHOP—No. For example, if I wanted to know the number of common assaults or murders or rapes or whatever occurring in Australia on a jurisdictional basis, I would ask an agency and someone would be able to find that information. It would be a relatively simple job because that data is maintained and tracked and collated and is accessible. Similarly with bank robberies and robberies of grocery stores—that data is available. I am hearing you say that in terms of the incidence of finance fraud over the internet that data is not accessible as yet around Australia.

Dr Heriot—There are two sorts of data, as you know. There is survey data for victimisation, which is the sort of data that Mr Webling and I have been talking about. Then there is recorded crime data, which is the data that you sight. If frauds over the internet are reported to police then there is a chance that they might be captured. I am not aware of the extent—and I could try to find out through contacting the ABS—to which people report instances of internet fraud to police.

Senator MARK BISHOP—In my instance, I did not report it, because I rang the bank and they said, ‘Do A, B and C.’ I did A, B and C.

Dr Heriot—If it is not reported, then it is very hard to get a recorded figure.

Senator MARK BISHOP—There is no mandatory reporting instruction issued to financial institutions around Australia for e-fraud, is there?

CHAIR—I think that I can answer that. No.

Senator MARK BISHOP—That is good, but is that the witness’s advice as well.

CHAIR—That was my experience when it happened to me. It was the same as your experience.

Senator MARK BISHOP—I want to get it on the record. Is that correct?

Dr Heriot—Do you mean a mandate on a victim of crime to report, because—

Senator MARK BISHOP—The banks.

CHAIR—The banks are not required to report when they have been victims of fraud.

Dr Heriot—That is as I understand it, but that is a Treasury matter.

CHAIR—Okay. We are grossly over time, but I wanted to get your very quick views on two issues. This should take a lot of time, but we cannot. The RICO laws in the United States and Canada: has any consideration been given to bringing something like that into Australia? Would it be possible to do that if the states did not bring in similar legislation? On the same basis and in the same sort of area, we have heard some evidence that Victoria is looking at the restoration of the old consorting laws but with them updated to have the consorting being not just in person but perhaps by the internet as well. How effective do you think that would be if the Commonwealth looked at some consorting laws? Is there anyone who can quickly answer the questions on both those areas? There are areas that evidence has been given on and the committee is a little interested in them.

Dr Heriot—I suppose I can say that the various approaches taken internationally and things such as Victoria looking at consorting laws are things that we are looking at. As you would know, Minister Johnston wrote to you drawing the committee's attention to this. We subsequently—a week or so ago—got a letter from you as chair requesting us to look at this. We will be preparing a submission. On that basis, we can take it on notice.

CHAIR—Okay. Thank you very much for both of those. We have gone over our time. I am sure that we could have gone for twice as long. We very much appreciate your input. Thank you very much for that and for your submission.

[10.32 am]

BARLOW, Mr Christopher John, Assistant Commissioner, Serious Non Compliance, Australian Taxation Office

GRANGER, Ms Jennie, Second Commissioner of Taxation, Australian Taxation Office

MONAGHAN, Mr Michael, Deputy Commissioner, Australian Taxation Office

CHAIR—I welcome you to the committee hearing. Thank you very much for coming along and sharing your busy day with the committee for our inquiry into the future impact of serious and organised crime on Australian society. These hearings are protected by parliamentary privilege. If there is anything we ask that you feel should not be talked about in public, you can request that we go in camera. You have appeared before committees before and know all the rules, so I will not repeat them. I invite you to make an opening statement and then we will ask you a couple of questions.

Ms Granger—Thank you very much for the opportunity to appear before you today. We normally would not make an opening statement but we are conscious of the fact that we did not put in a written submission. We have a fairly detailed one here that we are happy to make available to you.

CHAIR—That would be good.

Ms Granger—I might just touch on a couple of points for you.

CHAIR—If you could summarise it, that would be good. Thanks very much for that.

Ms Granger—The last time we were here was October 2005 and there have been a couple of developments since then that are probably worth pointing out. If the committee is interested, we can go into more detail on those with you. First of all, it is true to say that right across compliance with the tax system we are seeing a trend towards internationalisation. That is also relevant in this context. Just to give you one statistic that is relevant, 40 per cent of exporters are small businesses. There has been a shift from international dealings between a very small number of multinational companies to what we are now finding, which is that businesses and citizens are quite engaged in international dealings. That has been an important shift for us not only generally in terms of help, education and investigation activities but particularly in the area that you are interested in—tax crime and other serious crimes in Australia. I wanted to make that a point of context.

Last time we were here we were talking a lot about our development of whole-of-government activities in relation to tax crime and other serious crime. What is increasingly happening now is that we are also working with other revenue authorities internationally. I think that the last time we were here we may have mentioned JITSIC, which is a task force we are part of with three other countries—Canada, the UK and the US—that looks at abusive tax schemes.

Since that time, we are about to open a second centre in London, including Japan—that is one example. It gathers intelligence that is disseminated amongst tax administrations. In the area of abusive schemes but also in relation to tax crime, we are finding that we are now working, as I said, not just as whole of government here in Australia but with other tax administrations under treaty provisions, so it has got to be relevant to all of us. That is a particular challenge.

There has, obviously, also been Project Wickenby, which had been established at the time we last talked to you. We have had some experience with working whole of government and greatly appreciate the support we have had in undertaking that particular task force, and we can talk a little more about that.

We see our role as twofold. Our primary role in this area is in relation to the tax system and sustaining voluntary compliance with it, so where we are most engaged with other government agencies is in relation to tax crime or other serious crime. But we also see our role as supporting, more broadly, the focus around organised crime and other crime, particularly where there is a related tax aspect. Tax fraud is often involved, or money laundering, which has consequences for tax as well.

There have been some changes to the law that increases our ability to share information since we last appeared before you. New provisions were passed in March 2007 that allow us to disclose information that we have acquired for a tax law purpose where it is under the Project Wickenby task force or another prescribed task force in the future. A focus of your questions last time was on how we could exchange information.

You were also interested in the amount of secondments between us and other agencies. We currently have 21 officers seconded to the Australian Crime Commission, 30 to the Australian Federal Police and I think a couple to ASIC as well. We are also involved through HOCLEA in developing capability across the Commonwealth in this area and we have since October 2006 become an enforcement agency under the Proceeds of Crime Act. It is very early days for us but, again, that has been a development since we were last here.

Finally, in terms of trends, while it is not our role to do risk assessments around serious and organised crime per se, there are probably a couple of observations from our experience that you may be interested in us talking about or exploring a little further. We are starting to think in two ways about what we are seeing. First of all is the extent to which the activity is opportunistic or organised. We have for many years been dealing with opportunistic ones, and that is about putting burglar bars on houses and making it as safe as possible and continuing to do that. We are seeing increasingly organised attempts. The other dimension is whether it is undertaken at an individual, networked or group level. It is very early days for us in looking at that, but we are seeing a greater degree of sophistication, organisation and collusion. We are seeing the theme of identity theft, which I know is an area of interest to you, that is often a strong element in the tax crime that we are dealing with. They are probably the key things to touch on very quickly. As I said, we will be happy to provide you with a copy of the statement if you would like it.

CHAIR—Thank you very much, and that raises some issues that we are interested in.

Senator MARK BISHOP—I might start where you ended, Ms Granger. You said that you were starting to do some work in serious and organised crime. To paraphrase, I think you said

you were coming to the view that there was an increase in organised crime and it appeared to be networked or grouped. I take it you are talking about traditional gang operations in particular areas, not individual behaviour or individual assaults.

Ms Granger—We are making the distinction between systematic and opportunistic crime rather than organised crime in the stereotypical Mafioso context. One of the other aspects I probably should have mentioned as well is they are increasingly technologically sophisticated. While in a very broad sense some of the ways of doing refund fraud has not changed a lot—you are still taking over somebody's identity and trying to falsify his claim—because you can use electronic means it is very important we detect it quickly, and it can be set up in a number of places, so it is much more systematic. We have seen—and Mr Monaghan can give you more detail—some fairly sophisticated attempts, where it almost looks like they have been piloting our system and trying a few to see if they get under the radar before going for one big attack. We have seen an instance of an operation almost like a call centre to change details in the system. It was detected—that is the good news—but, as I said, there are more sophisticated, almost businesslike techniques.

Senator MARK BISHOP—In your response did you say 'systemic' or 'systematic'?

Ms Granger—Systematic. They are organised crimes.

Senator MARK BISHOP—They are organised, planned, programmed, deliberate and for a particular purpose?

Ms Granger—That is right.

Senator MARK BISHOP—Is that essentially what we would call white-collar fraudulent activity?

Ms Granger—Yes it is, but there can be some links to people who essentially are career criminals as well.

Senator MARK BISHOP—They are funding it perhaps?

Ms Granger—Yes.

Senator MARK BISHOP—Are those types of systemic, organised attacks principally against financial institutions or is there no set, identified pattern of behaviour as yet?

Ms Granger—We are talking in the context of the tax system. They are attempts to commit refund fraud. We are generally talking about lodging false claims for refunds and those sorts of instances. We are talking in the context of tax crime, but we are saying there are observations about behaviour that probably apply more generally.

Senator MARK BISHOP—With the previous witnesses we concluded discussion about increases in the incidence of financial fraud over the internet. Does your department monitor the incidence of e-fraud against financial institutions? Is there any obligation upon financial institutions to report such incidences to the ATO?

Ms Granger—There is not for fraud more generally, no. As I said, our context is tax administration, so we monitor for frauds against our system in that context. We sometimes become aware of broader issues—for example, we may have contacts with banks because they are seeing activity around particular accounts, et cetera, and they think there may be an issue. Mr Monaghan may be able to add some detail to that.

Mr Monaghan—There is probably not a lot to add because, as Ms Granger said, we receive information from a lot of people, of course, about suspect situations, including from financial institutions. It is very useful, especially where a number of tax refunds, for example, might be going into one recently created account or where there has recently been a change of address or something like that. That is a suspect situation which they alert us about. We put a lot of checks and controls in our refund and GST credit processes to detect suspect payments. A lot are stopped without ever leaving the office if we do not believe they are genuine.

Senator MARK BISHOP—I will go back to your opening remarks now. You talked about internationalisation dealings and the increasing incidence of small business engaging in international transactions, particularly in an export sense, and the taxation arrangements that logically follow from that. Are you detecting any increased interest by organised crime at an international level in tax fraud via businesses engaged in exporting from Australia?

Ms Granger—I am not sure I could draw that link specifically. There are two major challenges for us in relation to cross-border dealings—and the amount of business we are doing across borders is actually a good story for the economy and the community. A lot of our role is facilitative and it is focused on sorting out where tax is paid between us and other treaty partners. So that is the context of the overall operation. The implication of the number of businesses and citizens that now do this is, firstly, that they understand how the tax laws play out—and some of these can be quite complex, so, as I said, a lot of our energy is directed towards there. But it is not just legitimate business that is able to operate in that space. The biggest challenge for us in making sure we understand whether an appropriate share of tax has been paid here is transparency. You cannot see the other side of the transactions; you see the Australian side. So how do you know you have got the right outcome?

Senator MARK BISHOP—Let me make myself clear. I am not really inquiring as to the integrity of the taxation system with regard to international players; my question is much more specific: is it coming across your radar yet that serious and organised crime is taking an interest in exporters, with a view to improperly using the taxation system to garnishee consideration to themselves?

Ms Granger—Where I was going with that is that we are seeing instances of promotion of aggressive planning and tax fraud into Australia. That is one of the trends we are seeing and that is one of the elements in Project Wickenby. It is not the only one. We are starting also to exchange experience with other revenue authorities about some of the instances I just talked about—about attempts to commit systematic tax fraud on the system. We are finding common elements in that and we are starting to look to see if there are common players in that, because we suspect there are. We suspect that there is more networking, if you like, of those who engage in this internationally. I do not have hard, concrete facts for you, but, as I said, when I talk with my colleagues I discover that we are finding similar patterns in the modus operandi of how that happens. We certainly have seen some instances of promoters who operate across jurisdictions.

Going back five years or so ago, typically what would happen is information would be passed on and abusive schemes would be adapted in a particular country. Now there is almost a courier type situation, where people will try to make contact with people in the country. So it is not so much what you are asking about—riding on the back of export; it is more around importing into Australia.

Senator MARK BISHOP—The activity we are talking about is arguably purely criminal and profit motivated, and you can understand the reason why some people would go into that activity. Are you detecting any crossover from pure or traditional profit orientated criminal activity into political or ideological activity? Is there a link yet between those engaged in criminal fraud and perhaps terrorist type organisations?

Ms Granger—Not to my knowledge.

Mr Monaghan—I do not think we would be aware of seeing that. We would see more organisation occurring in relation to defrauding the tax system, for example. Obviously, as we said earlier, that could be linked to normal criminal activities—to fund it or just to get more money, which is what their business is about. But specifically I do not think I could confirm that we would have seen that.

Senator MARK BISHOP—You have not seen that? You have not detected those links?

Mr Monaghan—No.

Senator POLLEY—I was just wondering: has the ATO seen an increase in organised crime moving into legitimate businesses?

Mr Monaghan—It depends on what you mean by legitimate business. We are seeing organised groups, which we would say are criminal, running quite genuine business methodologies. They might run what appear to be legitimate businesses as a cover for fraudulent activity, which might well include defrauding us. Obviously, we have always been involved in assessing illegal income, including from people who commit crime. Over time I have seen signs of people establishing apparently legitimate businesses using the funds which they previously garnered from crime.

Senator POLLEY—Has there been an increase over the last five years?

Ms Granger—I do not think that is a new trend. There is nearly always a legitimate element when we are talking about illegal activities. Oftentimes when we have been working with other agencies in that regard, what come to light are the criminal parts of that. Visibility in the tax system tends to be around the legitimate aspects. There is nearly always a mix.

Senator POLLEY—You mentioned Project Wickenby in your opening comments. We are obviously all aware of the success of that operation. From that experience, do you see any trends emerging that are of concern to the ATO and is there any input that you can make to try to assist the agencies in their operations?

Ms Granger—First of all, in terms of trends, the concerning issue about the alleged behaviours in Wickenby is the one I touched on earlier—the systematic network promotion of arrangements to secrete income overseas and how you deal with that. That is one of the things that are pushing us to rapidly develop arrangements where we work both with other agencies and here. That is the overall trend.

There is a broader impact that two developments have had on our ability to do things in this area, apart from the actual results of Wickenby. At this time, as we go into tax time, our aggressive tax planning area visits quite a lot of professional firms and advisers and asks them what they think. This is a time of temptation and promotion. We have had a lot of intelligence back that, because of the publicity around Project Wickenby, and also because of the introduction of the promoter penalty legislation, clients are coming to them and saying: ‘Someone has been trying to promote a cross-border deal to me. I don’t want to touch it; what do you think?’ It is having a good effect. I think that illustrates that it is important not only to take whole-of-government action in relation to these things but also that we are transparent about what we are concerned about.

I think you are looking for things we need to do next. I think—and Mr Monaghan will probably want to add to this—that for us it is certainly about how we understand who is vulnerable to this so that we can continue to get out there and talk to them and dissuade them before they get engaged. The real challenge is detecting those who promote the networks that this goes through. It tends to be a bit subterranean—that is the big trend we have seen. It is not publicly advertised schemes and arrangements anymore. You have to know somebody or be introduced to somebody or have access to a website that is password protected et cetera. It is that kind of issue. The important thing is that, if we can address the promotion and the intermediaries that connect this, we can be much more effective at disrupting this before it takes hold.

Mr Monaghan—In terms of our learnings, we meet at a cross-agency level every month. As we learn the different methodologies that we see in practice, we can share that as an intelligence item. I think we are getting better at the multiagency level at understanding what we are seeing and what might be relevant to another agency. That is an important development that we will see in the next few months—we will get much better at that. The secrecy of these arrangements obviously makes them very hard to deal with. We are certainly learning a lot about the different powers of different agencies and the way that they can be applied to get in behind the secrecy of the arrangements. They have made them hard to find—that is the whole methodology—so the multiagency approach is incredibly important.

Mr Barlow—I want to make a comment about looking to the future. One of the things that would make a significant change in the environment for us is the change to the AUSTRAC laws, particularly around who is required to make a suspect transaction report, so there is a review of that. It is possible that accountants, for instance, could be brought under that regime, as is currently the case in Europe, particularly in the UK. That would bring accountants who became aware of someone promoting, for instance, an offshore scheme or a money-laundering arrangement—

Mr HAYES—Accountants and solicitors.

Mr Barlow—Yes.

Mr HAYES—And trust schemes and things like that.

Mr Barlow—Yes. That would change the system significantly.

Senator MARK BISHOP—Is that under review by government?

CHAIR—I think there is legislation underway, isn't there?

Mr Barlow—There are two tranches. The first one has just been brought. Now there is further work being done.

Ms Granger—Probably the other observation reflecting on it—because we are living with it we sometimes forget how far this has come—is the range of expertise that we now need to develop and foster. If I just take the taxes component of it: traditionally we are accountants and lawyers, but to forensically analyse computer systems we sometimes need to bring in industry expertise—a range of things. That is certainly important. Again, in the cross-agency part of this investigation, traditionally what we have brought to that is our understanding of tax law. But, as I said, there is now a range of sophistication around that in understanding some of the forensic aspects of how it is being accounted—computer systems, industry understanding and all of those things. It is becoming an increasing part of how we work.

Senator POLLEY—Have you found any impediments to accessing, through other government agencies, the information and support that you need?

Ms Granger—As you know, there are quite strict requirements. Usually that question gets asked the other way around—about our ability to provide information. The answer is that we have quite broad-reaching powers. There are some particular issues around treaty obligations in relation to what can be disseminated to us. I think that the new provision has been an important step for us, as I mentioned earlier.

Mr Monaghan—We can share information between agencies within the law, and there are quite tight provisions around that. But the amendment which the parliament passed at the end of last year is an important step to enable a task force like this to work well. It enables tax information to be shared with other agencies for the purposes only of Project Wickenby. Once we have shared it with them, they can then use it freely—only for Wickenby—for their own purposes. That is a change from the usual restrictions on tax information that is made available. So we say that is a very important step forward.

Senator POLLEY—I want to refer back to a question on the proceeds of crime that the ATO is involved in. Can you outline the processes and whether or not there need to be further legislative changes?

Ms Granger—I will ask Mr Monaghan to do that but, first of all, it is very early days for us. We have only just received it, so it would be quite presumptuous for us to be saying that we need further change.

Mr Monaghan—The changes to the proceeds of crime regulations enable us to do a lot of work that formerly the AFP would essentially have to duplicate, and so it has taken a lot of

duplication out of the system. We are, as we have flagged, being very cautious about exercising those powers. They would only be used in extreme cases where a tax assessment path was not viable. In terms of other changes, it is really a matter for government and Treasury and we would comment on that if we were asked. The changes were quite broad ranging, and we are putting a lot of effort into just bedding those down and, as Ms Granger said, understanding them before we jump any further ahead.

Mr HAYES—I think you made a salient point—that is that Taxation is no longer just revenue collecting for the Commonwealth and it does have an integral connection with law enforcement. With that is your increased involvement in organised crime; hence, why Taxation is a member of the ACC in any event in that respect. You indicated at the outset about establishing your offices overseas. I know other revenue collecting organisations have done that. To what extent is there overlap between the ACC overseas offices, which you guys are members of, and the AFP overseas offices?

Ms Granger—First of all, to put it in context, we have two offices overseas. One is just taking up that role in the UK and one is in the US. Overseas, we have people travelling for various reasons. The information that is exchanged in this task force arrangement, where we have four countries all situated in one place in Washington, is tax specific. It has to be relevant to each country to be able to be exchanged because the way the tax treaty obligations work is that there has to be what is called a relevant nexus to be able to provide specific information. It is focused on detecting abusive tax schemes. What we are doing is understanding developments and players that may be relevant to our own jurisdiction and passing that back to each administration so that they can then take what action they need to, including in some cases legislative change, or it can be compliance activity. So it does not have an overlap in that sense with ACC.

Mr HAYES—As I understand it—and you also made this point—previously, as a revenue based organisation that is predominantly staffed by lawyers and accountants, you guys have either employed or seconded a number of police officers to work for Taxation. To what extent has that grown?

Mr Monaghan—We do several things. We have some AFP outposted to work in our teams and, as we said, people are outposted back the other way. I did not quite catch the last word of your question.

Mr HAYES—To what extent is it growing? We have got a feel for the investigative roles that you are undertaking. You predominantly engage these people to be investigators, as I understand it.

Mr Monaghan—This is where we recruit ex-police into our investigation. I do not know whether that is growing or it is a source of recruits that we have had for many years.

Mr HAYES—Do you second them or are they employed by direct engagement?

Mr Monaghan—We have a couple of AFP officers who are physically outposted into our teams. There are only three, I think, at the moment; otherwise, it would be normal recruitment.

CHAIR—I see that Mr Barlow is from the Serious Non Compliance area. What has the ATO set up to address serious and organised crime? You obviously have a separate branch or department for it. What is it comprised of?

Ms Granger—To give it a little context: we have over 20,000 staff—I am not exactly sure of today's numbers; also, this figure refers to full-time equivalents—in the tax office and about 10,000 of them are in my area of compliance. Compliance is across all revenue and benefits. We are the second-biggest benefit distribution agency, too.

CHAIR—So half of your total staff is in compliance?

Ms Granger—Roughly half. It covers everything from large businesses to 11 million citizens and every tax—excise, goods and services tax, superannuation and income tax. As part of that—and Mr Monaghan will need to remind me of this—a few years ago we established a specific area called Serious Non Compliance. Michael is Deputy Commissioner of that area and Chris Barlow is one of the assistant commissioners in that area. Their focus is to look at the most extreme tax related behaviours. The focus of their activities is where we see tax crime or behaviours that we think warrant investigation and prosecution. At that point, we had a very significant focus within our excise area on illegal tobacco type activities. So we pulled them out of, if you like, the revenue product focused areas and pulled them into one space so that we could lift our level of sophistication in how we investigated this, including our relationship with other government agencies and also intelligence.

CHAIR—There is a difference between someone who is late putting in their tax return, which comes under your department, and someone doing the Wickenby type things or the Alpine Offsets—if I am not defaming anyone—

Mr HAYES—He is dead.

CHAIR—He is dead, did you say? Okay. In the case of seriously planned organised crime—

Ms Granger—To be referred to this area, it needs to be something that we consider has the potential to be a civil or criminal prosecution. It is evaluated within this area for that.

CHAIR—So, if it is civil, it goes to one area; and, if it is criminal—

Ms Granger—It can be civil in this area as well, but it has to be pretty serious.

CHAIR—Approximately how many people are engaged in that area? Are they accountants, lawyers and policemen? If we are giving away secrets here that we should not be, you can tell us.

Ms Granger—It is a mix of skills. I am told that there are about 600 staff in that area at the moment. So you can see that it is a specialised area. It includes an intelligence capability as well as an investigatory capability. We grow our own in the tax office as well as recruit those skills through the usual public sector processes. It is merit based selection. We have people from a policing background. The challenge for those who are coming from that background is to learn sufficient about the tax laws; the challenge for those coming from the tax background is to learn

sufficient about investigatory aspects. So, whichever way you go, there is a skill development required in that work. People working in that area need to be able to understand tax law as part of the process.

CHAIR—Anyone who can understand tax law has to be a genius!

Mr HAYES—Are any of your investigators listed as special members of the AFP, with investigative as well as police powers?

Mr Monaghan—No.

Mr HAYES—So the people that you would second would be police officers with specific investigative responsibilities?

Mr Monaghan—The people whom we would second from the AFP into our teams—there are only a few—would operate more as liaison points between us and the AFP. They assist with investigations but in that capacity. When we recruit people, it is just a normal public service recruitment. People who are currently or who were formerly in the police force can apply like anyone else.

Mr HAYES—Would a lot of your current investigations have been formerly conducted by the AFP?

Mr Monaghan—Not necessarily. We often work with the AFP and with state police investigators but we also have capability to investigate matters ourselves, and we may or may not refer those to the AFP. It would depend on how far the investigation goes or what the scale of the likely offences is.

Mr HAYES—In terms of serious organised crime, I would imagine that some would be referred to the AFP.

Mr Monaghan—Certainly. There are priority matrices within the agencies which determine whether the AFP or the Crime Commission will take on a matter. It is a very collaborative exercise. We would consult the AFP at an early stage and make some decision about whether we should investigate it ourselves.

Mr HAYES—In terms of resources, you might be better placed to conduct the investigation rather than hand it over to other resources.

Mr Monaghan—Yes. We would typically not hand it over. We would typically investigate it jointly. It would be rare, I think, for us to turn the whole matter over to the AFP.

Ms Granger—That is because of the specialised nature of the tax provisions. Getting a feel for where that is going, what you are probably leading more towards is, as Mr Monaghan mentioned, joint task force type arrangements where we would work with another agency in relation to something—

Mr HAYES—That would be set up under the ACC, in any event, wouldn't it?

Ms Granger—Yes.

Mr HAYES—How far would you take your own investigations to affect organised crime?

Ms Granger—A lot of the work that comes to this area is a reference from our field. Things will come as a reference from another agency, so it is important to put a good filter on that and work through what are the extreme instances of that that warrant a stronger sanction. As you know, we have a very flexible range of civil penalties that we can impose as well and that deals with the vast majority of the issues that we need to deal with.

Mr HAYES—Being a player on the ACC, you have an equivalent status to other of its members. One of the things that we have put to them in terms of their fight against organised crime is: ‘What impediments do you see at the moment? Where would you like to see improvements made to enable better investigation of organised crime?’ None of them have said that they have everything they want at the moment. Notwithstanding the fact that you are responsible to government, if we are serious about our fight against organised crime—and your agency is right at the front of that fight—you must have a view on it.

Mr Monaghan—I should perhaps clarify one point about our involvement with the Crime Commission: we second officers to work with the Crime Commission, but I am not sure whether that is what you mean by being part of it. We are not actually part of the Crime Commission as such; we just have officers working there. We are not a member of the board, for example.

Ms Granger—Any of us can always say that we can use more resources, obviously, but we do not—

Mr HAYES—It is not so much about resources. We are talking about a serious subject here.

Ms Granger—We believe we have had very good cooperation on our cases. We think that, in particular, the Crime Commission’s ability to gather intelligence has been very important for some of our activities. There is an issue—and Mr Monaghan could talk in more detail about this—about at what point the ACC can exercise those powers. How far do you have to have gone to establish criminal activity before you can exercise those? We have noticed that as a tension in that area.

Mr Monaghan—That is an important area for us—the intelligence that the Crime Commission can gather, given its focus on systemic organised crime, and the examination powers are an important way of gathering intelligence about players in illegal or criminal arrangements. So we would support a move to increase their capability in that area. Obviously, what the law says is a matter for government, not for us. But if there were a way to increase that capability we would support that.

Mr HAYES—Phone tapping powers in Queensland, I would imagine, would feature particularly highly in that.

Mr Monaghan—I guess that is for the Crime Commission to answer.

Ms Granger—Our emphasis is on the examination powers.

Mr Monaghan—Generally, what we are seeing is a need to operate at a multi-agency level now more often than we would have a few years ago. And the ability of the various agencies to understand what mischief is going on, who the players are, how they conduct their business and what the networks and links are, so that we can actually strategically strike where we disrupt that—that is an important area.

CHAIR—Do you have a feel for—I suspect you would not have any hard evidence on—how much illegally obtained money is then legitimately disclosed for tax purposes? For example, if someone robs a bank, puts the proceeds in a bank and gets interest, do they always declare the interest as income? Do you have a feel for that?

Ms Granger—Certainly in relation to disclosure of interest, the compliance with that requirement is high because people are very well aware of the reporting requirements. The answer is no. The nature of these activities is that they are secret and often not very visible.

CHAIR—You do not know what you do not know.

Ms Granger—We do not know what we do not know, but we could possibly pull out statistics for you where we know—and people do not normally describe themselves on their tax returns as having that occupation, so being able to profile through the system is not easy, obviously, and that is generally how we look for those patterns. So we do not know what we do not know. We could only tell you to the extent we had undertaken audits and what the adjustments were. So it reflects the outcomes of activity. You are asking me what the gap might be.

CHAIR—If someone did disclose interest or some other income on a sum of money, is it part of your role to say, ‘Okay, but where did you get that money from?’ That might be a very simplistic example, but it might apply in a more complex case.

Ms Granger—There are a number of ways in which that might arise. We profile by occupations. We do matching with sales of investment assets, back to asking, ‘Is that reflected in your tax return?’—exactly that methodology—and ‘Could you please explain why we are not seeing that?’ For example, the one this year is in relation to the transitional rules around contributing to superannuation. We receive reports from every super fund on contributions made that will be matched back to tax returns, and if we see a very big contribution and do not understand from the tax return how that was possible, we will be calling people. And that may bring that kind of issue to light.

CHAIR—If you are suspicious about where the money has come from do you refer that to the police?

Ms Granger—It will depend on how serious it is. There are some exceptions to—

CHAIR—Are you interested in where a sum of money comes from? You are only interested in the income of—

Ms Granger—Yes, the requirement under the secrecy legislation is that we do not refer information. There is a limited exception to that where it may relate to the commission of a serious crime.

CHAIR—Do you have direct access to state based records that are not directly criminally related, like drivers licences, birth, death and marriage certificates, firearm licences and that sort of thing?

Ms Granger—The records that we have been most commonly accessing are around land titles and property registers. The answer is that we can ask for information. We have very broad powers. We are conscious of not overdoing that because of the cost either to state agencies or businesses. But if we need it for the purpose of investigations relating to tax laws we can ask for it.

CHAIR—Can you demand it, or can you just ask for it?

Ms Granger—Yes, we can.

CHAIR—You can demand it?

Ms Granger—Yes, we can.

Senator PARRY—Do you have a unit to monitor internal corruption and in particular the leaking of information to would-be serious criminals?

Ms Granger—We have a unit that is responsible for doing internal investigations. It is broader than that specific issue, but obviously it is focused on detecting a range of what we call internal investigations where there might be a complaint. That can be anything from concerns about somebody trying to manipulate the system through to the behaviour of an auditor or just a straight internal fraud issue.

Senator PARRY—Does that cover senior management at the commissioner level?

Ms Granger—Yes it does. There is a committee headed by the Second Commissioner, Change, that it reports to and which oversees its work and that is at my level. If necessary it reports straight to the commissioner.

Senator PARRY—Is there any oversight? I gather that there is no parliamentary oversight. I suppose the ombudsman would be another avenue outside the parliament.

Ms Granger—There are a number of scrutineers that have powers of scrutiny over the tax office: the Tax Ombudsman, the ANAO—we are one of the ANAO's bigger customers—and the Inspector-General of Taxation. The commissioner appears before Senate estimates committee and we talk on a broad range of things. We also run quite sophisticated training and education campaigns in the organisations—many of which have won awards—to continually heighten awareness. Clearly the integrity of the tax office and its staff is absolutely critical for our reputation, so that is something that we invest in quite significantly.

CHAIR—How many people are in the internal investigations unit?

Ms Granger—I would have to get that information for you. I do not have those figures here.

CHAIR—Could you also provide on notice the type of qualifications of the investigative side of that?

Ms Granger—Certainly.

Senator POLLEY—I would like to know about the relationship that the ATO have with law enforcement agencies and insurance companies. If someone has their home invaded and makes a considerable claim against an insurance company—or even makes a police report of a considerable amount of valuable goods stolen—does that ring alarm bells in the ATO? Will the ATO look at taxpayers who have had their homes invaded? Do the agencies have cross-information?

Mr Monaghan—The way that would work would be that the police would refer to us information that they think might be relevant to a tax issue. Sometimes it is for the person's good. If they are aware that tax documents have been stolen and they advise us, we can lock down the tax file number and follow it up. Sometimes it is a surprising volume of assets that is hard to explain. If they believe that that is potentially related to a tax related crime, they would advise us.

Senator POLLEY—Is it the same for Centrelink fraud?

Mr Monaghan—Yes. Centrelink would advise us as well. We have good working relationships with them. We have done some investigations jointly with Centrelink.

Ms Granger—I have two more points to add. Firstly, we have a quite extensive data-matching regime with Centrelink so that benefits are matched to tax returns and vice versa as part of detecting that kind of issue. So it is not even necessarily detected at the level of a fraud investigation; it can be detected quite early. On the question you asked, Senator Parry, I should have also mentioned that on our security committee there are external members. I might add to that response and explain the composition of that committee and its role for you.

Senator MARK BISHOP—This question follows up on an issue that the chair raised. When you either request or require state agencies—births and deaths, firearms or whatever—to provide you with certain information and that information is provided, does your act permit you to share that information with other Commonwealth agencies or are you only entitled to receive it, use it and keep it for your own purpose?

Ms Granger—The threshold for requiring it is that it must be for a tax related purpose. There are restrictions, as I mentioned earlier, on the circumstances under which we have exceptions to that general requirements that we do not disclose people's personal information that is acquired for tax related purposes. Essentially, these exceptions are twofold. If it is a matter where we think it is a tax crime and we are working with other agencies in relation to a tax purpose, we would share the information. The other exception is if it is a serious crime. We are able in that case to pass on information. But it is not a question of getting all the information under tax powers of a register, for example, and then being able to pass that on to other agencies. We have quite strict provisions.

CHAIR—Thank you very much for your evidence and for your time. It has been very useful to the committee and we appreciate very much your coming along.

[11.29 am]

BURGESS, Mr Mark, Chief Executive Officer, Police Federation of Australia

CHAIR—Welcome. Thank you very much for coming along and for your submission, which has provided the committee with a good grounding for questioning other agencies, so thanks very much for that. You are probably aware that this is a hearing of the parliament so the evidence is protected by parliamentary privilege. If there is anything that you think should be said but not in public we can consider going in camera. I invite you, if you would like to, to make an opening statement. If you do not want to do that, we will just get straight into the questioning.

Mr Burgess—I am a sergeant of police from New South Wales on leave without pay while I perform my current position. I will take the opportunity to make an opening statement or a few statements if you do not mind. To assist the committee, I have prepared a couple of documents. I will relate to four key recommendations that we might suggest the committee have a look at in respect of this hearing. I will run through them and I am happy to give you those in hard copy form if that would help you through the process. In essence our submission and the points I want to emphasise today centre around some key issues: sworn police resourcing both nationally and in police forces across Australia as well as the Australian Crime Commission; the relationship between the Australian Crime Commission and Australia's police forces; and the integrated computer systems to allow police, including the ACC, to undertake their role far more effectively.

In our submission we raised a number of issues, and late last month we also launched another document, which I am confident each of you as senators and members would have received. We call it *Law and Order in Australia: Policies for the Future*, which was presented to all members of parliament and senators as well as all police ministers and police commissioners nationally. In both those documents, we pointed out that police across Australia deal with crime not only at the local and the state-territory level but nationally and internationally. All of those areas we argued are intricately interlinked, from the local drug dealer right through the organised drug distribution rings and, obviously, there have been links between organised crime and terrorism. We argue in our submission and our paper to all the political parties that there need to be coordinated and complementary policing systems and strategies to tackle all of the challenges, and it is imperative that the ACC is properly resourced and integrated into all of those strategies right across the country across all of the jurisdictions.

In 2002, we made a submission to the federal government. We called that *The move from the NCA to the ACC*, bearing in mind the change in the organisation, and we argued at that time and we continue to suggest that Australia needs a body that focuses solely on serious and organised crime at the national level but it needs to do it in a very synchronised way with Australia's police forces.

For this committee's current inquiry, as I have said, we have got about four recommendations, and I am happy to hand them up for you to have a look at. In recommendation 1—and this is in respect of staffing at the Australian Crime Commission, which was part of our submission—we

specifically recommend that the ACC undertake an analysis of staffing and requirements and, in particular, sworn staff requirements, and that an agreement be negotiated with jurisdictions to provide an agreed number of sworn staff over a determined period. The cost of the secondments, together with an administration fee paid for by the federal government, should be sufficient to ensure that all positions allocated by jurisdictions to the ACC are backfilled in their home jurisdiction by staff of equal experience. We believe the federal government should ensure that it has in place an agreement with each jurisdiction covering these arrangements.

In our most recent document to political parties, *Law and Order in Australia*, we also raised the issue of police powers. We also raised that issue earlier this year in respect of the Senate Standing Committee on Legal and Constitutional Affairs inquiry into the Crimes Legislation Amendment (National Investigative Powers and Witness Protection) Bill 2006, where at the time it was proposed that unsworn staff of the Australian Crime Commission be given certain powers in relation to the execution of search warrants. As a result of our submission and, I think, others, it appears that that particular section of the bill did not go further, but it certainly raised some concerns for us.

In respect of our second recommendation—and it relates to that very issue—we seek the support of this committee to ensure that police powers are not extended to non-sworn personnel and are reserved for sworn police officers. There is a bigger issue in this whole debate about staffing of the Australian Crime Commission, and it reflects right across all of the jurisdictions in Australia, and that is in respect of workforce planning.

We are asking that the committee consider a recommendation with respect to supporting a national police workforce planning study, funded by the federal government and commencing in 2008, as a collaborative effort between the Australian government, the Police Federation of Australia and all state and territory police jurisdictions. We have estimated that that study would cost \$1 million, and we propose that it be overseen by a steering committee consisting of representatives of the federal government, the Police Federation of Australia and Australia's police commissioners. We suggest that the study should lead to a national police workforce strategy 2008-18. This issue would pick up the issue of appropriate staffing at the Australian Crime Commission at the same time.

In both of the submissions we have made this year—one to your committee and one to all the political parties—we also raised the issue of CrimTrac as the national criminal investigation database system. We suggested that Australia lags seriously behind countries with which we like to compare ourselves when it comes to having an effective suite of national criminal investigation data systems. We argued in our submissions that a real opportunity now exists for CrimTrac to play a more significant and meaningful role in terms of providing information sharing solutions for law enforcement right across the country. We believe that CrimTrac should be fully developed to become the key hub for exchanges of law enforcement information between Australia's police jurisdictions and broader law enforcement. We also argue that it should be charged with establishing a national automatic number plate recognition system similar to that operating in the UK and parts of the USA. This has the potential to revolutionise policing across Australia, with huge benefits for crime prevention, reduction and investigation as well as for national security and border protection activities.

Our fourth and final recommendation relates specifically to CrimTrac. I would like to expand upon what we have put in our original submission to this committee. We would ask that the committee support a commitment to sufficient recurrent funding over the next four years, to be determined by a scoping exercise conducted through CrimTrac, for CrimTrac to be utilised as the national criminal investigation database hub serving the ACC, the AFP and state and territory police forces, providing access to risk related data nationwide, including but not limited to the national DNA database, the national fingerprint database, the national child sex offender register, the CrimTrac police reference system and a single national case management system for Australia's police, gun and explosives licence holders, aviation and maritime licence holders and chemical and fertiliser purchases. Secondly, we would seek the committee's support for a commitment to funding, to be determined through a scoping exercise again through CrimTrac, for the development and establishment of a national automatic number plate recognition system.

Last week I was in Western Australia talking to police officers in that state. I was talking to them about our support for the issues of CrimTrac. I was reminded of the shooting of offender William Watkins at Karratha in Western Australia in early 2006, and the committee might be aware of this. Watkins had three days earlier murdered sisters Colleen and Laura Irwin in Melbourne. He had then driven 5½ thousand kilometres in those three days to Western Australia, where he came under the notice of Senior Constable Shane Gray at Karratha for failing to pay for petrol. When Gray did a check on Watkins via the Western Australian police computer system he was not shown as wanted or a suspect on the system. Unfortunately, of course, he was on the Victorian police system, but that was not accessible through the Western Australian system. Watkins attacked Gray and tried to get hold of his firearm. Gray, the senior constable, was seriously injured in the incident, and Watkins was eventually shot and killed.

Our argument is that this incident could have easily resulted in the death of the senior constable. It would have meant that Watkins would have been at large in Western Australia with a police firearm, and the community would have been at risk. If our police systems had been integrated at the time, through CrimTrac as we are suggesting, Gray would have immediately picked up when he did his check that Watkins was either a suspect or wanted for a serious offence, being murder, and obviously he would have approached him far differently to the way you would approach a person who had failed to pay for petrol, and he likely would have arrested him without incident. Likewise, if the automatic number plate recognition system we are suggesting had been fully integrated nationally with all the states' roads and traffic authorities, Watkins probably would not have got out of Victoria. He certainly probably would not have got through South Australia and he would not have got all the way to Western Australia. We think that is a very important issue that needs to be considered by this committee and by the government and opposition parties as a whole. In closing, to use the words of the 1964 Republican presidential candidate, Senator Barry Goldwater, when he said, 'Crime is a national problem,' it is the PFA's view that a wide range of policies of state, local, territory and Australian governments have a significant impact on crime in local communities right through to serious and organised crime. Therefore we argue that a greater integration of policies as they affect policing, law and order and crime prevention is essential.

CHAIR—Were you here when the Attorney-General's Department gave evidence?

Mr Burgess—No, I was not.

CHAIR—I suspect that some of what they said might come up in questions from my colleagues, but, if it does not—and I acknowledge your limited resources—I would appreciate it if you could look at the *Hansard* of what they said about the last matter you raised and give us your comments.

Senator POLLEY—Thank you for your submission. My question goes to your recommendation of a national crime database. I refer you to page 21 of the submission from the A-G's office. They said:

An assessment of the proposal revealed that it would have significant privacy, policy and legislative implications and would require substantial resources and time to develop.

I do not come from a law background, so I cannot establish what the cultural blockage is to establishing a national database. From my perspective—and I am looking at it from the community's perspective—it is a fairly logical step. So I wonder if you could enlighten us. At other hearings, the law enforcement officers in every jurisdiction were asking for the same thing. So where is this cultural blockage coming from?

Mr Burgess—That is an interesting question. I speak on behalf of police officers, and I can tell you they want a national system. When you talk to people like Senior Constable Gray from Western Australia, they will tell you very clearly how they think it should operate. It is an issue. I think CrimTrac is giving evidence this afternoon—and they have done a wonderful job in this area. But our concern is that, while there was initial funding from the federal government to establish CrimTrac, which we totally supported, it is my understanding that, by and large, CrimTrac survives on income from criminal history checks. There is no further major influx of funds, which is what we think is going to be required to overcome the hurdles raised by you and perhaps by the Attorney-General's office as well. I do not know what the cultural differences are. Obviously, there is a bit of work to be done, and there are perhaps privacy issues. But I have argued before that, if you go to one central point to get all of that data, that is a far better system for auditing misuse of that data than having it spread across eight jurisdictions and potentially other agencies as well. Police forces across Australia are calling for it. I certainly know that people from CrimTrac, the Australian Crime Commission and others are calling for it. I think we need to bite the bullet and do something about it.

Senator POLLEY—Do you have any comment on the suggestion that some agencies would decline to enter onto a national database any information they consider to be of extreme importance to them and do not want to share?

Mr Burgess—I would argue that there would always be levels of data that might not go onto the general database so that the constable on the street would be able to access some of those things. But for issues such as the one in Western Australia that I have alluded to, where someone is a suspect or wanted for an offence as serious as murder, that information should be available right across Australia. There are things like the automatic numberplate recognition system. I heard on the radio that, as part of the process of picking up people in the terrorist attack in the UK in the last couple of days, they utilised the automatic numberplate recognition system that operates in the UK. As I said, I think this is such a vital tool for law enforcement in the future that there is an obligation on all of us to get across all those difficulties and resolve them.

Senator POLLEY—With emerging technologies, you think you have come to terms with something today and then it changes again tomorrow. I noticed in your submission the assertion that some of the costs have shifted from the Commonwealth back to the states. Do you have any views on how the proceeds of crime can be better utilised to fund some of these projects?

Mr Burgess—I think it is important that we undertake a scoping study to work out how this is going to be done, how much it is going to cost and, obviously, how it is going to be paid for—and I do not think the states can just walk away and say it is not their responsibility. Why do we suggest that it be done through CrimTrac? To me, it is logical: that is the group that has that area of expertise. I think it has already been established and it is recognised. The board of CrimTrac are the police commissioners of Australia, so that has the states' buy-in. I think CrimTrac is the logical vehicle to undertake that work. Obviously if there has to be some argy-bargy about who is going to foot the bill then that can be done. But let us work out what we need, how much it is going to cost and how we are going to pay for it—because I think it is essential.

Senator POLLEY—I have one final question, because I am mindful of the time. In your experience, what communication levels exist between the agencies currently and how is that working?

Mr Burgess—I think the communication levels are good. It is good certainly at the senior level and at other levels in respect of various aspects. So in respect of counterterrorism, homicide and fraud—those sorts of areas—it is very good. But the issue, and I keep coming back to it, is about spreading that information right down to the lower levels of the organisation so the constable on the street here in Canberra can get access to information that is vital to them, in the same way as the constable on the street in Perth, Adelaide, Melbourne or anywhere else around Australia. But I think the levels of communication are quite good, and the levels of information sharing, sharing of resources and sharing of personnel are quite good.

Senator MARK BISHOP—To follow up on the issue that Senator Polley raised: your state organisations represent police officers from a very junior level right to a most senior level within the respective state police forces, do they not?

Mr Burgess—That is correct.

Senator MARK BISHOP—A-G's were quite adamant this morning that they were not in favour of a national or a centralised database whereby the various police agencies and, arguably, the intelligence agencies could access it. They wanted to go down a particular route, an alternative route that might provide the information in a different way. At a more senior level within the various police federations and police unions—perhaps at a policy level—are you aware of any in principle objections to a national or a centralised database which each of the local police forces and intelligence agencies could access on a routine basis?

Mr Burgess—This document, *Law and order in Australia: policies for the future*, which contains our specific submission about CrimTrac, is a document on behalf of every state, territory and federal police association or union in Australia, which jointly represent 50,000 Australian police officers. So that is our policy position: we want one national criminal investigation database.

Senator MARK BISHOP—I would also invite you then to have a good look at page 21 of the Attorney-General's submission, and perhaps your organisation could respond in detail, in writing, to their objections so that we have the perspectives of both working and senior men and women within the police forces. Could I now invite you to turn to your own submission. The table on page 4 is headed 'AFP functions and sworn police numbers over 21 years'. Firstly, can you tell me what a 'sworn' police officer is, and what is the significance of that word?

Mr Burgess—A sworn police officer is fully sworn, a fully operational police officer who has access to all powers that belong to police officers—powers to arrest, powers to search, powers to detain et cetera. So it is someone who has taken an oath of office and, by virtue of that oath of office, is on duty 24 hours a day, seven days a week as an independent officer, a constable of police.

Senator MARK BISHOP—What is the source of that table?

Mr Burgess—The source of that table is the AFP annual reports.

Senator MARK BISHOP—For the years—

Mr Burgess—1985 through to 2006.

Senator MARK BISHOP—It shows a significant decline of almost 20 per cent in the number of sworn police. Are you aware of any counterpart increase in—I will use the words—non-sworn police? Have the functions perhaps traditionally performed by sworn police officers been shifted or tasked to other people within the AFP?

Mr Burgess—That is part of our concern. I also have a document here, which I am happy to share, if the committee is interested, where we have broken down the numbers in the Australian Federal Police as at May of this year to ascertain the sworn numbers, the unsworn, the protective services et cetera. It then breaks the sworn numbers down further. We have used that in our discussions over the last several weeks. There is no doubt. This is not an exercise in having a go at the Australian Federal Police, but what we are clearly saying is that the budget has significantly increased in the Australian Federal Police—without a doubt—

Senator MARK BISHOP—Yes, it has increased by hundreds of millions of dollars.

Mr Burgess—the numbers of staff of the AFP have increased significantly in the last several years—there are no arguments about that, and the government is to be commended for it—but the numbers of sworn police officers—that is, the people who can do real policing functions—have not increased at that rate at all. In fact, over the 21 years they have gone backwards.

Senator MARK BISHOP—The growth has occurred in the non-sworn areas. Can you identify the major areas of growth in the non-sworn areas in the AFP?

Mr Burgess—I am not able to personally at the moment. I could not give them to you specifically, but one of the areas has certainly been the protective services, which has come back into the AFP after a period of being out of the AFP. On our reckoning some 1,330-odd or 1,340-odd officers have come in. They are the ones you will often see at the airports who are now

dressed in an AFP uniform—with the exception of ‘Protective Services Officer’ on the epaulettes—or—

CHAIR—They are not sworn officers?

Mr Burgess—They are not sworn officers. Yet they are shown now in the last AFP annual report under ‘sworn’. They have a semi-sworn capacity, if that makes sense. They have powers in respect of the areas of protection—some of those areas around airports, et cetera—but they are not fully sworn as you would know a police officer to be.

Mr HAYES—The young fellow who was shot in the Solomon Islands wearing a police uniform which clearly had ‘Police’ written on the back of it was not a police officer.

Mr Burgess—No, that is correct. He was a protective services officer.

Senator MARK BISHOP—There has been huge growth in numbers and funding and huge growth in a whole range of additional tasks given to the AFP, particularly in the last seven or eight years. You do not argue that people who are engaged, say, in intelligence functions, analysis functions or research functions attached to terrorism issues or to organised-crime issues or drug trafficking or paedophilia—those sorts of major issues—necessarily have to be sworn officers, do you?

Mr Burgess—No. I did not bring it with me, but just before I came here I spent an hour with an academic from the UK who is compiling a report back in the UK about reform in policing. In fact, we just had this discussion, and I provided him with a document that we have prepared as a policy with the Police Federation. It is about the civilianisation of positions and about the steps that you would go through to identify a position that could be carried out by a civilian as opposed to a police officer. I would be happy to provide it to the committee if the committee wanted it. We are not saying that every position has to be a police officer by any stretch, but we are saying that to perform a lot of the functions that the community expects us to perform, and particularly in the area of serious and organised crime, you need fully operational, fully sworn police officers.

The other issue that I raised in my submission earlier—and I am sorry to go on—is the notion of workforce planning. We have to recruit across Australia in the next three and a bit years some 13,000-plus new recruits into policing just to meet our natural attrition and commitments that state, territory and federal governments have made to increased resourcing across the country. Your own state has to go offshore to recruit because they cannot recruit here in Australia. So we have got some significant problems across the board.

Mr HAYES—It would be helpful if we could have a short dissertation on the difference between an employee as someone who may be engaged by an intelligence organisation and someone who takes an oath of office as a police officer. The committee might benefit from that.

Mr Burgess—It is as I said. A sworn officer has the full gamut of what you would expect an officer to have: the powers to be out the front directing traffic, arresting people and putting them in handcuffs, et cetera, to use firearms and to use lethal force—those sorts of issues.

Mr HAYES—It is the independence of office, too.

Mr Burgess—Yes, it is the independence of office. They are independent office holders. There is a debate in industrial circles that police officers are not employees, because of the independence of the office of constable, so they cannot, in essence, be directed to carry out certain actions. It is quite a complex area. Hence, part of the debate we are having as well, which is outside the terms of this committee, is about the notion of the profession of policing and how you develop the profession around the office of constable—because it is pretty important, as we see it. Of course there is all of the oversight that goes with it as well. As I said, I do not want to prolong this discussion, but they are exactly the issues I was talking about earlier this morning with the academic, and I have provided him with a document which I will be happy to provide to this committee as well.

Senator MARK BISHOP—It might be useful—subject to the chair—for you to provide that information to us.

CHAIR—Yes.

Senator PARRY—On the police staffing issue, it seems that one jurisdiction is poaching off another, so we are circulating experienced police. Do you see all commissioners of police engaging in the national staffing policy that you mentioned in your opening address and working out a national pool—like a national academy, for want of a better phrase—or do you still see individual jurisdictions recruiting staff to overcome this shortage? This has implications throughout the entire system. Intelligence officers are being dragged out of policing agencies and sworn officers are being depleted because of needs in other areas, and organised crime is going to be the beneficiary if we do not get experienced police back on the ground.

Mr Burgess—We are not advocating national academies or any changes in that respect. You are right: police officers will move. We are part of a project, which we totally support, called ‘interjurisdictional mobility’—that is, the ability for police officers to move across jurisdictions. Over the years, there have been significant impediments to that happening. We are saying that we need to do this on a collective basis. If we are talking about 13,000-plus police officers, it is a big task. We are competing out there with everybody else who is competing for quality personnel. Our argument is that we should be big enough—it is a bit like the databases—to collectively come together and look at strategies that are going to collectively assist us in policing across Australia. I used the example of Canada. The Canadian government committed \$Can1.1 million to a Police Sector Council. That council is, for want of a better term, a tripartite arrangement between the government of Canada, all of the police commissioners and the Canadian Police Association, our counterpart. They are working jointly on that sector council to look at all of the issues we are talking about—that is, having the right number of police with the right skills in the right place at the right time into the future. That is the challenge.

Senator PARRY—I dare not raise salary, because I know you would indicate that police are underpaid—they are like politicians!—but do you think salary is comparable? It appears to be a professional wage for a professional position. Do you see that as an impediment to recruitment?

Mr Burgess—It is not an issue that is in our document. Some jurisdictions seem to have little difficulty attracting people and others are having far more difficulty. I do not know if I could put

it down just to salaries. Obviously in Western Australia there is a resources boom and of course salaries would be a component because people can earn significantly more money driving a truck or cleaning a bathhouse in a mine than they can being a police officer.

Senator PARRY—We have heard previous evidence that highly technically skilled individuals—particularly in ICT—within organisations are leaving police jurisdictions and taking up positions within the private sector. The money is an issue there. Do you feel as though there is dissatisfaction, with police wanting to leave the police jurisdiction—both state and federal—because of the job rather than the money, or do you think that when people leave for that reason it is purely a money factor?

Mr Burgess—I think there are a number of factors. I read one of the transcripts of one of your earlier hearings in New South Wales, where I think the deputy commissioner made some comments about someone who left and went to Defence and came back. That sort of thing is always going to happen. I keep arguing that police are a very marketable commodity. They are very well trained, very well skilled and they have got discipline. They are really good employees. I say to young police all the time: you are a very marketable commodity. If you leave policing, you do not have to just become a security guard. There are a lot of people out there who would like to employ you. We skill them up very well.

Senator PARRY—Who do you think should drive national police recruitment and training? Do you think it should be driven by the commissioners of police?

Mr Burgess—It should be done in an arrangement with all of us. We think that a federal government should take the lead with this workforce planning strategy we are talking about and should bring the state and territory jurisdictions along with them. We have given our commitment quite clearly that we want to be part of that. Forget the boundaries; let us look at this as being about policing in Australia, to make sure we have got the right mix of skills, the right mix of people and the right numbers with the right skills going forward. That is why we say a plan of that nature will assist the likes of the ACC in particular, because we are suggesting it should be looking 10 years in advance at the people we need.

Mr HAYES—Obviously your view is that the Commonwealth does have a responsibility—not necessarily constitutionally—in addition to the AFP, in terms of law and order across all states and territories, with a view to fighting crime.

Mr Burgess—I think we do. We raise in our submission—and in our submissions to all political parties et cetera—that really it goes beyond the boundaries. We cannot have the blame game. The blame game does not work. Local governments have got a responsibility. State governments have got a responsibility. The federal government has got a responsibility. We should be working together, coordinating our strategies in line with the likes of the ACC to make sure, in particular for your inquiry, that issues like serious and organised crime are attacked but at the same time worrying about that low-level crime that is affecting the daily lives of people out there, the communities.

Mr HAYES—You think that the ACC should be further strengthened in terms of the composition of its staffing. How would you see that organisation further developing?

Mr Burgess—From our perspective, we were very supportive of the formation of the ACC, as I have indicated in our submission. This gets back to one of my recommendations. The important thing for the ACC is that we ensure that we have sufficient experienced staff—and I am talking from a police perspective, so sworn staff—in the ACC to undertake the functions that the government, police forces around Australia and the community expect—

Mr HAYES—So not as another police force but—

Mr Burgess—No. One of the clear things that we have said is that the ACC should not be seen as the ninth police force. It should be very much integrated with police forces. When we made our submission back in 2002, we suggested that the board of the ACC should be the police commissioners of Australia and it should be chaired by the commissioner of the Australian Federal Police. We stick by that. I know that that has been expanded somewhat over time, and there are probably reasons for that. But we wanted to make sure that the Australian Crime Commission had a clear focus on serious and organised crime and were not heading off on other tangents. We thought that having senior professional police officers, such as commissioners of police, on the board would be the best way to do it.

Mr HAYES—One of the frustrating things about witnesses coming along here who are either paid by the Commonwealth or have some sort of agency fee associated with them is that when you ask them how they would like to see things changed to make things better in the operation of the ACC they tend to navel gaze a little. What would you say is the single most important thing that we should be concentrating on? For instance, when we put the same question to Ken Moroney as a departing commissioner, he very much weighed in on expanding the role of CrimTrac. But from a police officer's position and someone who represents 50,000 cops across the country, what is it that we need to do to strengthen the tools of those who go out and fight crime?

Mr Burgess—If you are talking in terms of the ACC, I agree with Ken Moroney wholeheartedly about CrimTrac. That is certainly a must, and we said that quite clearly in our paper and in the evidence this morning. It is about making sure that we have the right number of people with the right skill sets at the ACC. That requires coordination with the states, because the states and the AFP are the ones who hold those people at the moment—those senior investigators. Going to the ACC and working for a period of time at the ACC should be seen to be part of, I suppose, career enhancement, if that makes sense. But we need to do it in a way that is meaningful but that is not at the expense, if you want to call it that, of the home jurisdiction. As I said, when someone very senior—a very experienced investigator—goes and works at the ACC as a police officer, which we would encourage, we need to have in place a process by which the jurisdiction that releases that person or those people does not suffer. There needs to be a way to make sure that positions are properly back filled et cetera.

CHAIR—Thank you very much for that, Mr Burgess. We appreciate that. If you would not mind following up on the couple of issues that we raised with you, that would be very much appreciated.

[12.04 pm]

KEELTY, Commissioner Mick, Commissioner, Australian Federal Police

LAWLER, Deputy Commissioner John, Deputy Commissioner National Security, Australian Federal Police

CHAIR—I welcome Commissioner Mick Keelty and Deputy Commissioner John Lawler. Thank you very much for coming along and assisting the committee with its inquiry into the future impact of serious and organised crime on the Australian society. Commissioner, I understand that you have no objection to the media being present and are aware that they are. The committee has determined that it has not objection either. I mention that for the record.

Commissioner, you have attended so many parliamentary committee meetings that I do not need to run through the rules except just to remind everyone that this meeting is protected by parliamentary privilege. If there is anything that you want to say that you think should not be said publicly, we can have an in camera hearing, should you so request. Thank you for your submission which the committee has received. We very much appreciate the work put into that. Do you want to make an opening statement of any sort?

Commissioner Keelty—If I could. At the outset, perhaps I could apologise. Dr Grant Wardlaw, the head of our intelligence area, was to be with us but cannot make it, so I have with me Deputy Commissioner John Lawler.

As you would be aware, as the Commissioner of the AFP, I am also the chair of the board of the Australian Crime Commission. I mention that because it is important to understand that the different roles can require different perspectives and I may need to change hats in the course of giving evidence here this afternoon. But, as the AFP commissioner, my views reflect the AFP specific but diverse Commonwealth law enforcement responsibilities. As chair of the ACC board, I note that the board brings a national agenda to the work of the Australian Crime Commission. This includes establishing the national criminal intelligence priorities, which is very important in the context of the terms of reference of the committee; but it also authorises various intelligence and investigative operations in specific crime areas and works towards the ACC's general menu of working strategies.

I would like to provide an overview of the two perspectives—the AFP perspective and the Australian Crime Commission. I will talk about the Australian Crime Commission board. You would be aware that the board is created under the ACC Act and it has several prescribed functions. The board is not responsible for the financial and operational administration of the ACC; that is the purview of the CEO, who I understand will be giving evidence before the committee. It is important to recognise that the board is comprised of the heads of 13 different agencies spanning not only the state and territory police but also other Commonwealth government agencies. That is relevant in terms of particularly terrorism, where the Director-General of ASIO is a member of our board. The composition also ensures that the ACC board is uniquely positioned to bring a truly national perspective to efforts to address nationally significant serious organised crime.

If you look at a quick review of what the ACC has been doing in recent times, the work has included legal firearms and outlaw motorcycle gangs. We have worked in a bilateral way with the Victorian police force on the gangland activities. We have been looking at large-scale money laundering and tax fraud, Indigenous child abuse, airport security and the threat posed by amphetamines. Whilst these are all diverse issues, the board understands that these are different bodies of work and we authorise activity in respect of that work.

A prime example of the national perspective that the board applies to the work of the ACC is the setting of the national criminal intelligence priorities, or NCIPs. They represent a collective view of the threat posed by various crime issues. In essence, they should be providing you, as a committee, with the forward-looking and the present view of what the national criminal intelligence priorities are for all of us. They are key mechanisms through which the board ensures that the ACC's menu of work is properly focused. The NCIPs are informed by the work that the ACC does in developing the yearly picture of criminality, which is also another body of work that should assist the committee in understanding the nature of the criminal threat into our country. There are regular reviews that the board conducts of the ACC's work. That is consistent with ensuring that the national crime environment is understood by the ACC and is actually being worked upon by the ACC.

One of the key ways that the board ensures appropriate work is conducted against the identified priorities is by establishing authorised determinations and task forces. I think it is important to note that the board, whilst diverse in its membership, has clearly illustrated a collegiate approach to addressing issues. I have to say with all candour, having been a person who was seconded to the National Crime Authority in its previous iteration, I know there was a lot of concern, both in law enforcement circles and in the community, as to whether this ACC board would ever work with so many people on it. But it has—and it has worked quite effectively.

The board ensures that there is a national perspective on crime, underpinned by strong intelligence sharing between relative agencies and the ACC. The board has oversight over several initiatives, including the standard intelligence exchange format and also the ongoing development of the databases which are available to all jurisdictions—being ACID and ALEIN. From the board's perspective, I can confidently state that there are processes and mechanisms in place to ensure that appropriate action is taken by the ACC to identify and respond to current and emerging crime issues and their impact upon Australian society.

Perhaps I can turn very briefly to the AFP. The AFP has made a written submission to the inquiry and it covers our views on the role and function of the ACC as well. We note that organised crime groups remain focused on vulnerabilities in the full range of social systems from conventional drug trafficking to exploiting false or stolen identities and personal information to large-scale sophisticated tax fraud and abusive of complex financial systems. Organised crime groups have exhibited the capacity to exploit new opportunities as society develops and law enforcement impacts on their activities. The displacement effect of our work cannot be understated. In terms of the terms of reference for the committee, displacement is a major issue for us to ensure that we are still keeping ahead of the game.

Perhaps I could just mention some relevant specific points. Firstly, it is important to understand that the areas of responsibility for the AFP are as the Commonwealth primary law

enforcement agency. That is enshrined in legislation under the AFP act and enhanced by the ministerial direction from our minister. Under the framework, the AFP focuses on transnational crime, particularly drug trafficking and people-smuggling, international policing and capacity building, large-scale fraud and money laundering and key infrastructure, including airports, protection and policing and counterterrorism. The committee would appreciate that the majority of the AFP's investigations do address high-impact criminality. That is usually criminality involving activities beyond the scope of individuals and involving capable structured groups.

I will give just a quick snapshot of the sort of work that we have been doing. There is the work we have been doing with the Victorian police to recapture Mokbel in Greece, the work we have been doing in Indonesia with the arrests of Abu Dujana, the head of the Jemaah Islamiah group there and the person responsible for the bombing of our embassy in Jakarta, and the work we have done with the Indonesian National Police with the arrest of 'Captain Bram', who we say was involved in the movement of some 1,500 people to Australia at a benefit to him of in excess of \$11 million.

The AFP retains the view, outlined in our submission and also our previous submissions to this committee, that the ACC Act makes it an effective law enforcement agency. It has proved to have the flexibility that the NCA did not. The ability we had to work with Victoria to issue a determination in relation to the gangland murders down there is a good example of something that would have taken a considerable period of time under the old NCA arrangement.

The AFP however does have a much broader operating environment than the ACC. Our community policing and national and international activities are an example. Like the ACC, the AFP actively monitors operational strategic developments in all areas through dedicated intelligence assessments. We also have, in the AFP, a forward-looking framework, using environmental scans and scenario analysis. Our work suggests that organised crime groups will continue to exploit society's increasing uptake of technology and the opportunities it provides to both target victims and make their own operations more efficient and secure. Technology will continue to enable criminals to conduct existing crimes such as child abuse, pornography and identification crime.

I will just quickly add there that, at a meeting of the police ministers of Australia and New Zealand last Thursday in Wellington, they have sanctioned the move of the Australian High Tech Crime Centre to become a business unit of the AFP. I invite the committee, when you have time, to come to the High Tech Crime Centre because, in a hearing such as this, it is difficult for me to demonstrate—but, for example, you may have heard of Second Life, which is a phenomena where people live in a virtual world. Ten months ago there were 300,000 people registered as residents on Second Life; today there is in excess of seven million people. In a 24-hour period, there is \$US1.7 million transacted on Second Life. It has actually changed the nature of how we approach policing and how we will need to approach policing in the future.

Globalisation has also impacted on crime and it will remain a key driver to organised crime developments. On the issue of technology, the AFP have been doing some forward looking in terms of technology. We have actually established the position of manager for technology enabled crime, because the other issue that may not be apparent to you is the issue of robotics and biometrics. Developments in that sphere will mean that proving the identity of a person committing a crime will become much more complex into the future.

Preventing crime offshore before it has an opportunity to harm Australia has been a big focus of the AFP. I mentioned the operation we did with the Victoria Police in Greece, but clearly we have been working in all parts of the world: in the Middle East, in Asia—particularly in the Pacific. We do this in a way that hopefully as a strategy helps prevent crime coming to our shores.

We are also contributing to the prevention of crime through developing aid programs to enable developing police forces to become more competent and more professional. We see that as a way of not only increasing the relationship but also preventing crime before it comes to our shores. The most major trend that can be expected to impact on Australian society is the increased prominence of terrorism. Some commentators may contend that the new legislation empowers and additional policing resources are inconsistent with the low likelihood of any direct attack in Australia. However, it is important to note that the massive potential impact on Australia's social, political and economic systems that such an attack may result in is something that needs to be understood.

There was a study by the Department of Transport and Regional Services earlier this year estimating the economic impact of a terrorist attack on an Australian airport. It concluded that the estimated cost over two years would be something in the order of in excess of \$30 billion. Just on that point, I am an advocate for measured management of terrorism and the terrorism threat, but I think some things occur that we move too quickly from. For example, the thwarted Heathrow attacks would have had a significant financial and economic impact not only on the trans-Atlantic route but on air travel generally. You might recall when SARS hit that you could travel through parts of Asia, some of the hub cities such as Singapore, and see all the aircraft livery lying dormant on the tarmac. We are actually almost a product of our own success, in a sense, that that would have been an impact much larger than the attack on 11 September 2001, in our view.

The AFP continues to demonstrate its commitment and capability to contribute to the national security effort and we are very collegiate in our response to that, particularly in our relationship with the intelligence agencies. As the committee would appreciate, there are many difficulties in exactly measuring the impact on crime of any one agency, including the AFP—I know that is one of your areas of focus—but we have been developing a performance measure framework that does this. One of the things that we have done is to create the 'AFP drug harm index'. It measures not only the value of narcotics seized as part of an investigation but also the downstream effect that that may have had on society, and to tries to put a dollar figure on that.

The committee might be pleased to know that we do not do this work as a single agency; we have partnerships with a number of Australian universities to sense check what we do. In fact, we have a joint project, with Flinders University and the University of Canberra looking at measuring the work that we are doing offshore in the Solomon Islands and other places, independently of us, as we are doing that work.

Since we have made our submission, we have been provided with additional funding to develop a new state-of-the-art operational intelligence system which we will obviously be discussing with the ACC and other law enforcement agencies to ensure that it has some capability for interoperability. The AFP has found that in terms of the space we now police, particularly in terms of terrorism, we are connected to the intelligence agencies and by virtue of

that we need to have a high upgrade of our security systems. We are in the process of developing that capability. That obviously will impact on some of the interoperability with some of the other systems in the other law enforcement agencies and we will work our way through that. That is all I have by way of an opening statement. I am happy to take questions.

CHAIR—Thank you very much for that. I suspect you have answered some of the questions before we ask them. Thank you again for your time. You personally, and the AFP generally, have been very busy with a number of major issues in recent weeks, so we do appreciate your time.

Just to start off, the committee as a whole has been interested, through the course of our inquiry, in the issue of databases and what appears to the committee, from evidence given to us, to be the unavailability of a single database that is accessible by all police forces and other law enforcement agencies around Australia. We have heard some evidence about why that is not possible and yet we have heard a lot of evidence about why it is absolutely necessary. We wonder what the impact on the APF is from this inability to have this one single database. Are you able to cope with what I understand are several databases, not all of which are interoperable and some of which have constraints through such things, it has been said to us, as relate to privacy, culture or other things? We would like your general views on that.

Deputy Commissioner Lawler—I might start. We might hold the commissioner here until 1.30 with that question alone. It is a very complicated area. But I think it is, in our view, too simplistic to take a position that we have one central database for all law enforcement for all purposes because, indeed, as the commissioner has indicated, the law enforcement space is very complicated, particularly in the context of the information that it holds. Certainly information around national security—and the national security classifications that are required in relation to that information—requires special treatment under the Commonwealth government guidelines and by our intelligence agencies, and foreign intelligence agencies, to allow information to be shared.

Secondly, we have broader criminal intelligence that in some senses might be historical information—intelligence holdings that are not about contemporary investigations. Thirdly, of course, there are intelligence holdings and investigation information, which relate to current, often very sensitive ongoing investigations. They are the three broad areas of holdings that law enforcement agencies have to deal with—not all law enforcement agencies with all information but certainly the AFP with all three areas.

From an AFP perspective we do have a national database, the PROMIS. You heard the commissioner indicate that we have received funds to upgrade that system. All jurisdictions have been engaged in that process, looking for opportunities to appropriately provide mechanisms whereby information in all of those categories can be shared. There may be a very real need in the context of terrorism to share information that goes across jurisdictions, as we have over the last few days. That occurs through the joint counterterrorism teams and the states and territories having access to the PROMIS and the data being put into that system.

The committee might also be interested to know that the PROMIS forms the basis of the ACC's investigational data holdings and is also utilised by the Northern Territory Police, and other police jurisdictions are showing an interest in it within Australia. Also very importantly, within our region there are a number of foreign jurisdictions that have embraced the PROMIS

and its international counterpart, CMIS, and have utilised that in China and in Indonesia. So we have a very strong take-up of our investigational systems.

There is work being done with the Commonwealth agencies around mechanisms to improve data sharing. I think we can always improve data sharing, and I think technology gives us an opportunity to do that. The committee should be aware that the National Counter-Terrorism Committee, through its investigations capability, is also looking at mechanisms to ensure that we have the best technology applied to the sharing of information between law enforcement and intelligence agencies when it is appropriate and necessary.

CHAIR—Thank you. I might just ask if any of the committee want to follow on that database issue before we start on questions proper.

Senator MARK BISHOP—We have had a lot of discussion about this database, and the Attorney-General's Department in their submission were quite strongly of the view that there were significant policy, legislative and privacy considerations, and hence they wanted to go down another path. Reading your submission and watching developments over the last two or three days, I am increasingly struck by your role in intelligence gathering and intelligence dissemination, by how you tap into local networks and by your involvement overseas with a range of agencies.

My question is this: is it possible that the high importance placed on and the high priority now given to politically and ideologically linked terrorism and intelligence work—the focus put on that—is becoming a bit of an impediment to your work in purely criminal activities, serious and organised crime? I say that in the context that you have made reference to a lot of your intelligence information now being security classified, there being levels of access and there being stuff that your senior people would discuss at particular levels which is simply inappropriate to be discussed at a database level or accessed at constable level. The question is this: is that important concentration on intelligence gathering and political work appropriate to be maintained in the one bag of work, or is it perhaps appropriately carved off now, considering its prominence?

CHAIR—I am not quite sure that is quite a question on databases.

Senator MARK BISHOP—No, but it relates to databases. The reason it occurred to me was that we are now being advised that a lot of the database material is not suitable to be accessed by policemen at that level because of its political content.

CHAIR—I understand that. It is slightly off the database track.

Senator MARK BISHOP—If you want to return to it later, you can.

CHAIR—Does anyone have any questions particularly on the databases? The Police Federation raised the question of the incident where a murderer in Victoria was arrested for a traffic offence in WA but the WA police were not able to find out that this guy was wanted for possible murder investigations in Victoria. That lack of ability has been raised with the committee a number of times.

Commissioner Keelty—I would be surprised if that were the case. I am not questioning the evidence of the PFA but—

Mr HAYES—But, with respect, wasn't it a matter that the Western Australian system did not record that this bloke was wanted for murder when the officer on the job called up his database in connection with this bloke being arrested for failing to pay for petrol?

Commissioner Keelty—I think you are precisely on the point. There are flags in the system—I know Mr McDevitt is giving evidence from CrimTrac and I would urge the committee to talk to him about the interoperability of databases between jurisdictions. I have some experience in this, going back to what was called the National Exchange of Police Information. I was the AFP representative on the national database establishment. A lot of it goes down to what people put on systems as to the reaction of the police who access the database. But, if a person is wanted for murder in a jurisdiction, there would be a persons of interest flag on the system that people could access.

Mr HAYES—Would the system in Western Australia necessarily interrogate the Victorian system to show that? I think this was what Senator Bishop was getting at with the issue about what the Attorney General's office was saying about cultural impediments. Isn't what we are doing here trying to improve the lot of coppers out there in providing them with the necessary tools to do what they do?

Commissioner Keelty—Absolutely. That is why I say I would be surprised if the facts are as crisp as what has been described because, if somebody is wanted for an offence or if somebody is a missing person, there are flags on the data systems that are available to all the jurisdictions to identify that person. Obviously, it is up to the operator—if it is a highway patrol officer—to call for the correct check of details on the correct database. As I say, the system is only as good as the users really. The best answer will come from Mr McDevitt. But I would be very surprised if that were the case.

Chair, I am happy to answer the question from Senator Bishop because it is relevant, because I raised it and so did the deputy about the intelligence relationship we have. I mentioned in my opening statement that the AFP is doing some very high order work. At another time we might be able to discuss that in greater detail, but it is high order work. Clearly one of the things that is important to us as an organisation is integrity. So, to reduce the opportunity for corruption, we can compartmentalise investigations on the database. We can work it so that, if somebody has an interest in Mick Keelty, for example, they can put the name in the system and know that the name is being looked at by somebody but they will not necessarily see the detail behind it. We can, with the intelligence for national security, compartmentalise that so that people cannot access that sort of data.

So there is a balance to be had here with having an anti-corruption mechanism in place. The committee would be well aware of some infamous cases where police have got themselves into trouble either accessing data on their systems inappropriately or even selling it. We have systems in place to ensure that that does not occur. That does not impede the investigation capability. With the way the persons of interest database works, it in fact enhances it because you very quickly establish why a person is recorded on the database in the first place.

CHAIR—I can understand if the database, when you type in Mick Keelty or Ian Macdonald says, ‘Yeah, look he’s a murderer in Victoria and has avoided paying for petrol in Western Australia.’ If that is available, that is one thing. Perhaps it should not say that he is also the local al-Qaeda chief because that is more of an intelligence security issue. Is that what you are saying, that there is a certain level of information?

Commissioner Keelty—That is right. There are tiers in terms of the data that is held on people.

CHAIR—Perhaps, as you suggest, we should pursue that further with CrimTrac.

Senator PARRY—Commissioner, with your experience now with the AFP and your knowledge of other jurisdictions internationally, could you give us a very brief snapshot as to where Australia stands in relation to two areas: intelligence sharing within the country and with other agencies and serious and organised crime management—those two areas in particular?

Commissioner Keelty—Happily. In terms of intelligence sharing, we would have one of the best arrangements of any country in the world. I do not say that lightly. I have only recently returned—in fact, last week—from London and the United States. I had a meeting with agency heads in Europe prior to that and I am very familiar with the systems that are available in Asia. I think it would be very difficult to find systems that are better than the ones that the AFP and Australian agencies are using. The UK has very good systems. Of course, we benchmark systems. Canada has good systems. Other federations like the United States do find it difficult, even with Homeland Security, to get the information quickly from one place to another. I do not mean that as a criticism of the US, but certainly the anecdotal material that comes to me is that our systems are quite up to the mark when it comes to comparison with those overseas.

Senator PARRY—That is despite our federated base similar to the US; we are linked better and we talk better within states?

Commissioner Keelty—We do. Good examples of that are that it is very rare that you will see an operation that the AFP does—and certainly the ACC but very rare for the AFP—where there is not another agency involved, whether or not it is another Commonwealth agency. We are doing a lot of good work with the New South Wales Police, a lot of good work with the Queensland police and a lot of good work with the Victorian police. I do not mention other jurisdictions only because they do not come to mind on current operations. But it does work well. It is useful to recall that we had the Australian Bureau of Criminal Intelligence, which was the national database system, and we have transported that into the ACC and built on it. So it should be better than it was 10 or five years ago.

Your question on serious and organised crime—both the deputy commissioner and I have an extraordinarily good relationship with the new body in the UK, the Serious Organised Crime Agency, SOCA, and with the FBI. I can tell you that our approach to serious and organised crime in this country is something that is marvelled at in other parts of the world. Again, I do not say that lightly. I have letters that have come to me in the past week or so from Europe where a lot of the European agencies have been watching and they are keenly interested in what we are doing and how we are approaching serious and organised crime in this country.

Most of the work that we are now doing has an offshore connection. I think the early investment by the AFP into overseas posts—we are now in 26 countries around the world—has actually returned dividends in a very significant way.

The other thing—and I should have mentioned this in my opening statement—is that just this year we have been made permanent observers to ASEAN police chiefs and in March this year we were made permanent observers to Europol. Both those permanent observer positions are recognition of the approach to work that the AFP has and our success rate.

Senator PARRY—I was at Europol last year pushing the cause. Just on recruitment—this has come up in Senate estimates at which you were present—what is the solution? The police federation gave an indication of their views. It is obviously a serious issue and will affect police jurisdictions around Australia and the capability to fight crime, in particular crime that takes a lot of human resources. Where do you see us going and what do you see as the solution to recruitment and, in particular, to maintaining sworn officer levels and improving those levels?

Commissioner Keelty—There are a couple of things. One is that we need to be comparing apples with apples. One of the things that the AFP has done is increase the size of the unsworn area in the AFP—not necessarily deliberately to get unsworn people but to get people with the right skills to do the work that we are now doing. That has seen an increase in the size of our intelligence area. So, when you say that there is an X amount of staff in the AFP today compared with what it was 10 years ago, it is not a fair comparison because we have moved in different directions. In terms of the AFP, I do not mind boasting: we have 3,160 people waiting to come into the organisation today as I speak to you. That is an incredible figure.

Senator PARRY—Have these people been approved? Have they gone through security—

Commissioner Keelty—No. They are people who have expressed interest in coming into the organisation, so they go onto our list as vacancies become available. We are building to a size of 6,700 by the end of next year.

In terms of your question about overall policing numbers, I guess retaining staff is an issue at the national level. There are various reasons why police organisations do not retain staff. I have spoken to Commissioner Paul White in the Northern Territory and we have talked about the difficulties of policing in the Northern Territory—the remoteness of it and the lack of familial connections. I have talked to my counterpart in Queensland, Bob Atkinson. Bob unashamedly will tell you that a lot of police want to come and work in Queensland. Some of it is the social demographics of Australia. In Western Australia, despite the perception that the AFP has stolen their staff, a lot of the police staff have actually gone to the mining industry.

Senator PARRY—But that is an issue of—'poaching' is probably too strong a word—a limited pool. I would not like to hazard a guess as to how many in that 3,100 would be serving police officers from current jurisdictions.

Commissioner Keelty—I have actually given the legal and constitutional affairs committee those figures. They are not as high as you would think. I should say that, before the international deployment group was created—and that has been the main reason why some police have wanted to come to the AFP from other police forces, to use their skills in another way—I wrote

to all the police commissioners in Australia and invited them to take the opportunity to second their police officers to the AFP for that purpose. In fact, I wrote to them twice. I think this goes back to the threshold question of how many police should be in Australia. Clearly there was no incentive for them to second police to the AFP because they were going to lose good skilled staff to the AFP. We in the AFP need people, so we have advertised and, of course, people have come to the AFP. We have not set about poaching people as a strategy. I have a commitment to the Australian government to fill the international deployment group to a force of 1,200 by the end of next year and I have to do it.

I do not know whether the committee is aware of this—and I do not want to speak on behalf of other commissioners—but I happen to know that Western Australia and South Australia recruit directly out of the United Kingdom, because they cannot maintain their policing numbers from within their own states. It is a phenomenon that has less to do with poaching and more to do with a general problem of getting policing skills. It is not only here in Australia; it is also in other countries around the world.

Senator MARK BISHOP—Further to that question, with the demands made upon you by both government and developments and the work that you are now required to carry out and the limited number of people that you can recruit, are you getting to the stage where you need to have your own national academy to recruit into and to train and source from, like the state police forces do and a bit like the army does at Duntroon and the Navy does at its own establishments? Is the shortage that Senator Parry is referring to getting that significant—and the cross-border poaching and the poaching from overseas—that you need to have your own direct institution in which to train?

Commissioner Keelty—We have our own Australian Federal Police College where we recruit and train people. The people working in the international deployment group are trained at a complex just outside of Canberra that is purpose built for the work that they do. It is actually a Third World village built with—

Senator MARK BISHOP—I am sorry. I will ask the question in a different way.

Commissioner Keelty—Should there be a national academy to provide police for all the jurisdictions?

Senator MARK BISHOP—No, for yourself. Are you becoming so differentiated—

CHAIR—I think the commissioner just said there is.

Senator MARK BISHOP—But the complaint we are hearing anecdotally is that there is still a degree of recruitment or poaching or whatever the word is from other jurisdictions and state police forces. You referred to the fact that they were not willing to second people to the AFP. Is the training at the internal academy of sufficient size or volume to cater for your growing demands? I suppose that is the question.

Commissioner Keelty—It is at the moment. All the classes have been full and are full from now until the end of next year. Our Barton college, as we call it—our learning and development centre—is 100 per cent full in terms of its accommodation over the course of the next 18

months. We have had approval in the budget to rebuild the college at Majura, which we will do in the course of the next three years. So, in terms of our own academy arrangements, we do have something in place there. What might be a better answer for you is that we do have recruit training courses but we also have lateral training courses. So for police who come from other jurisdictions, who have retired or who have left their own police forces but who have recent experience and want to come into the AFP, we have a lateral arrangement where we do not give them the full training course; we give them one that is tailored for where we are going to deploy them.

CHAIR—Just on that, why aren't the Australian Protective Services people classed as sworn police officers?

Commissioner Keelty—Because of the difference in function. They are not fully-fledged police officers because they are principally involved in protection duties of places like Parliament House and other institutions, such as ANSTO and some of the diplomatic missions, so they are not sworn police. They are there for a protection function. We really need them there to do that because, if they got involved in police work, it would take them away from the facility they are protecting.

Senator PARRY—Do they have powers of arrest?

Commissioner Keelty—They do have powers of arrest and detention under certain circumstances. They can hold people until the police can come in and deal with the issue. That is more often than not likely to be in a state. For example, in New South Wales, if something happened at ANSTO, they could detain somebody and then the state police could come and deal with the issue.

Mr HAYES—Perhaps I can say that I am not one who thinks police mobility is a bad thing. I think cross-mobility of police officers is something that is probably good for the nation generally. I think we have used it reasonably effectively in seconding people into the AFP for deployment, whether to other agencies or to international deployment.

I think one of the big concerns is the level of attrition. I think that nationally for a male it is about 12 years; for a female officer it is about 9½ years. Yet in the New South Wales experience it costs the taxpayer something like \$125,000 to put a probationary cop on the streets. That has to be of concern. The level of attrition generally is something that, whilst it is a concern to every police jurisdiction, I am not sure what efforts we have made to redress that or to investigate it even. I would have thought there is some utility in looking at that with a view to what we have to do to retain people in the profession of policing as opposed to simply retaining people in one particular jurisdiction.

Commissioner Keelty—I agree with you. I think our attrition rate of sworn members has been relatively low over a lengthy period. It has been sitting around the four to five per cent mark. The overall attrition rate out of the AFP is about eight per cent, but that includes a large number of unsworn people. We actually had a strategy in the AFP, going back some years, where we went to fixed term appointments. Two commissioners ago in the AFP, Commissioner Peter McAulay did exactly what are you talking about in terms of studying the attrition rate and where the experience was being lost—and it is at that five- and 10-year mark. So we created a scheme

called AFPAS, which was an accrual scheme. Basically, it gave you a financial incentive to roll your contracts over, to keep them built up and accumulating over time. The incentive was that, the longer you stayed in, the bigger the—

Mr HAYES—Sort of like a military scheme.

Commissioner Keelty—Yes, similar.

Mr HAYES—Or a variation of it.

Commissioner Keelty—But, when the AFP underwent a significant financial review during the mid-nineties, that scheme was done away with because it was an unfunded liability. The scheme was put in place, but there was no money set aside for the future cost of it.

Mr HAYES—From your position as Commissioner of the AFP and your standing as chair of the ACC, is it of concern to national law enforcement generally that we have such a high turnover rate of professional police officers?

Commissioner Keelty—Yes, it is. Other commissioners will tell you that obviously we are very aware of the cost of a recruit. There are studies into why people leave. I suspect some of the solution to it is screening before they come in. People's circumstances change. I think you hit on a very good point before. I would like to think that those who come to the AFP from state and territory police on secondment and do the international deployment group work and then go back to their parent force are better for the experience and provide a better community policing outlook.

Mr HAYES—That was the experience of the NCA and the attraction of seconding your investigative officers for a period there.

Commissioner Keelty—Exactly, and I am a case in point. But equally we have lost people to the state police. There are a number of very prominent former AFP officers who have gone into the Victoria Police in other roles as well. We do not suffer from it as much as they do in other countries, however. Police skills and police experience are much sought after by the private sector.

Mr HAYES—They are now.

Commissioner Keelty—Yes, and you see a lot more of it in other countries than we do here. I think it is to do with a lot of things. I was going to say to you too that with partners, obviously with working couples in this day and age, one of the things that we have tried to do in our organisation is actually cater for the partner so that we do not lose the skills. This is something that the AFP can do. If somebody has a professional partner who has been transferred from Melbourne to Brisbane, more often than not we can transfer our member with that partner so that both do not lose their profession by virtue of one person being transferred.

Mr HAYES—Is this something that should be starting to be addressed at national police ministers conferences? These are issues. I know that mobility between police forces has been on their agenda for so long—the last 13 or 14 years that I am aware of. It happens with

backbreaking speed—not! Richard McCreadie cannot go and fix this problem himself. The only way this can be done is collaboratively. Shouldn't the Commonwealth, quite frankly, have a bit of a lead role to set the pace in this?

Commissioner Keelty—Answering the former question, the commissioners are alive to this and this has been very much part of our discussion on the professionalisation of the service so that we could get to the point where we are like teachers and nurses who can transfer their skills across jurisdictional borders, if that is the reason why people are leaving. But there is the reality that, if somebody is a member of a particular police force and has worked up to, say, a senior constable level and is three or five off becoming a sergeant and the police force imports a sergeant into that position, which sets them back another couple of years before they get the promotion, it is not as easy as it might first seem. But I do take your point in terms of—

Mr HAYES—But isn't there a need to look collaboratively at what is required to address the retention rate? In losing a cop before 15 to 20 years, you lose a heck of a lot of skill and knowledge.

Commissioner Keelty—I agree with you, but—and I do not mean to be arrogant—it is not a problem that we are suffering from in the AFP. We have cradle to grave people in this organisation. One of the reasons for that of course is the diversity of our role. We offer people vastly different experiences. If they get to that point that you are talking about at that 15-year experience level and they are looking for something else, more often than not we have it. It might be an overseas post somewhere or it might be a posting to another part of the country.

Mr HAYES—Of those 3,000 you have waiting out there to come in now, what percentage would go through Barton college and progress as sworn police officers?

Commissioner Keelty—As many as we can take in terms of the vacancies we have. I think it is around 700 that we will take on between now and the end of next year, and they will all go through Barton.

Mr HAYES—So they will actually become professional cops.

Commissioner Keelty—Yes.

Mr HAYES—They will not be administrative officers or intelligence investigators or anything like that.

Commissioner Keelty—There will be a variety of positions.

Mr HAYES—So they can be sworn—

Commissioner Keelty—There will be some unsworn as well as sworn.

Mr HAYES—How many of those will be sworn?

Commissioner Keelty—I do not have those figures in front of me, but I am more than happy to provide all those figures to the committee if I could take that on notice.

Mr HAYES—Yes. I am interested particularly in what occurred last week in Great Britain and the correlation between organised crime and terrorism. Reports are now coming out of Europe on that. One of the things that occurred in Great Britain, as I understand it, was that the police were able to track the vehicles because of their integrated system of vehicle registration identification. I know that we have the luxury of being able to check when a vehicle is unregistered at the flash of a gun at the moment, but do we have the capability to have that degree of integration of vehicle movements as the British did? If not, is that something we should be working towards in terms of—apart from serious and organised crime—the prevention of terrorism?

Commissioner Keelty—It is something that we are working towards. It is an issue that has been addressed by the government in terms of proceeds of crime. They have allocated, I think, just in excess of \$2 million to CrimTrac to actually come up with a model to integrate that capability across Australian jurisdictions, because there is a disparate number of those systems around in different jurisdictions. In answering that question though, I would not want you to think that was the solution to what the Brits were dealing with last week. There are many other complex issues that I cannot talk about here.

Mr HAYES—One final thing and this puts you in the same position as we did the New South Wales commissioner the other day—but I know he is retiring, so it might be a slightly different—

Commissioner Keelty—You can see the smile on his face.

Mr HAYES—Having regard to the fact that this is a committee that in this inquiry is very much focused on serious and organised crime, but is also a committee which is focused on improving the lot of policing generally, what are the things that we should be looking at? Can you give us a snapshot, without necessarily going through ministers and ministerial support? From a police officer's position, what are the things that we should be looking to for the future in supporting our respective police forces?

Commissioner Keelty—I think one of the major issues for the future in dealing with crime will be supporting the capability of police in terms of technology-enabled crime. It is a new area that is growing exponentially. I mentioned in my opening statement that one of the things that is a feature of serious organised crimes is the ability to be flexible and to adopt new techniques very quickly. In the future, I think police forces right around the country will need to move into that space very quickly. A lot of those skills do not exist in policing today. They will have to be imported into policing and probably exist more so in the private sector.

The other direction for policing is, I think, more partnering with the community and the private sector. There are some very effective models being used in the UK, particularly in the CBD of London where private security guards are part of a network with police working to assist in the security of the city.

Mr HAYES—They are not the fellows who failed to make policemen now doing policing roles, I hope.

Commissioner Keelty—No. I received a number of briefings on this in the UK. The US is going down the same path in some quarters. These are people who are enthusiastic and people who are given some of the first responder type skills such as bomb detection, crowd control and being able to seal off crime scenes so that police are freed up to do some of the other very important work that has to happen quickly in a crisis management situation. That is just off the top of my head.

Mr HAYES—You have not mentioned anything about expanding CrimTrac or those devices and tools for policing.

Commissioner Keelty—I think CrimTrac is going in a very positive direction. In fact, you will hear that this afternoon when you speak to Mr McDevitt. I think some of the plans that CrimTrac have in their strategic plan will be quite enlightening to the committee.

Mr HAYES—Is CrimTrac an organisation that the Commonwealth should think about investing in?

Commissioner Keelty—It would depend on what the investment was going to do. As I mentioned before, you can overestimate the fact that technology will solve all your issues if you are talking about IT systems, because you are only as good as the data contained in those systems and the speed at which the information can be transferred. There are some very good initiatives coming out of CrimTrac that ought to be supported and have been supported through, as I mentioned before, the proceeds of crime initiative.

Senator POLLEY—In relation to the technologies, cyberspace and things you alluded to in your opening comments, what are some of the challenges that are facing the AFP and law enforcement in the country and what sort of budget will be needed in terms of expertise to combat organised crime?

Commissioner Keelty—If I can answer the last question first, it is a bit hard to estimate that in dollar terms; I could not give you that today. Some of the difficulties in terms of future crime will occur with the use of robotics to commit crime. Our environmental scanning tells us that, even with some of the cloning of human beings, not necessarily in Australia but in those countries that are going to allow it, you could have potentially a cloned part person part robot. You could have technology acting at the direction of a human being but the human being being distanced considerably from the actual crime scene or the commission of the crime.

In addition to that is the use of the internet. I gave the example of Second Life and its exponential growth. There are other examples of crimes being committed in the virtual world. They use their credit cards to purchase things in the virtual world, and policing that will be quite difficult. I have had discussions with the head of the Child Exploitation and Online Protection Centre in the United Kingdom just recently. He is the counterpart to our High Tech Crime Centre. We have actually seen now a convergence of paedophile activity on the internet and paedophile activity in the real world and we intend to go down the path of a joint operation in some developing countries where children are at risk where we are watching people in the virtual world convert what they are doing in the virtual world to travel to some of these countries where children are at risk.

This convergence from the virtual to the real world is a new phenomenon and makes evidence gathering quite difficult. It will be a problem for us into the future, as will be the simple art of telephone interception and listening device activity. If you think about it, a lot of that activity could actually happen in the virtual world, where it will be difficult, if not almost impossible, to prove who indeed has had the conversations or who indeed has been part of the conspiracy—without wanting, through the committee, to give anyone any ideas of how to commit crime. These will be real issues that we will have to face. I think the deputy wants to give me a break.

Deputy Commissioner Lawler—Another overlay that adds another level of complexity to the issue the commissioner has raised is the legal issue of jurisdiction. Of course, the internet poses a whole array of jurisdictional issues. One of the key planks in treating that risk is what the AFP has been doing for over one-quarter of a century, which is to have strong linkages with our international counterparts and strong linkages with the attorneys-general departments and the departments of justice in the various jurisdictions, so that, where we do find this activity, we are able to nimbly, quickly and efficiently gather the data and the evidence that is needed to track these global criminals as they move in cyberspace.

When the commissioner talks about technology-enabled crime, he talks about two dimensions of it. The first is around the crime committed on the technology, as it were—the botnet attacks, the attacks against the banking system that use technology. But then, very importantly, what the AFP and other agencies are doing is focusing on the enabling, which is those criminal entities that use the facilitation of the internet of communications to improve their own effectiveness—their ability to communicate, which is a key ingredient of organised crime; their ability to communicate securely, which is a problem for law enforcement. One of the risks that that presents is a lack of intelligence, and we are working very hard to look at what other intelligence mediums we might enhance to militate against that eroding risk which we believe will occur over time. So areas around human source management, particularly human source management in collaboration with our stakeholders, will be very important.

Senator POLLEY—This probably seems pretty mundane after that discussion but, in terms of organised crime and the investigation we had into the amphetamine trade, outlaw motorcycle gangs obviously were at the forefront of our hearings. In relation to their activities, are there any strategies that have been implemented that would be parallel to the terrorism type strategies you are implementing?

Deputy Commissioner Lawler—At the end of the day, outlaw motorcycle gangs and indeed acts of terrorism commit criminal offences and breaches in Australia of Australian law. So the full array of tools available, in a generic sense, to law enforcement are very important to treat those particular problems. We have not mentioned legislation, but legislation will be particularly important in a rapidly evolving and moving environment—legislation that has flexibility and enables application of law to new technologies. So broad generic laws which have been enacted in recent times will become very important—issues of training, training the workforce to meet the massive amounts of data that are being collected now in the digitised world in the course of investigations. When computers are seized, when phones are seized, how do we make sense of those mountains of data quickly so that we can not only prevent crime but put the perpetrators before the judicial system? My response to you is that the tools available for the investigation of any crime can be equally applied to organised crime, to the outlaw motorcycle groups, to groups

that might target our tax system or our financial systems and to those involved in amphetamines or terrorism.

Senator POLLEY—In relation to the change of the landscape of organised crime, we have had some evidence on criminals getting involved in legitimate businesses. Have you had any experience in or can you enlighten the committee on any activities that you are aware of?

Deputy Commissioner Lawler—We do see that as a way in which organised crime attempts to legitimise its business. Indeed, we have seen examples where organised criminals have been involved in criminal activity for a very long time and, once they have accumulated sufficient wealth and economic benefit from their criminal activity, transition into legitimate businesses or, indeed, attempt to use legitimate businesses to mask further criminal activity. I think history will show that this is a very common activity that organised criminals and criminals in a less organised context attempt to utilise.

Senator MARK BISHOP—Finally, returning to the discussion we were having on the national database, I refer you to paragraph 3.5 of your submission. I will quote the last sentence there:

These arrangements somewhat mitigate the need for wide-scale cross-jurisdictional databases while allowing agencies to develop ...

their own needs. That comment strikes me as being somewhat equivocal. There seem to be a number of threads running on the issue of the national database, the apparent needs of local police officers, issues of intelligence, issues of access, issues of priority and perhaps alternative means of getting the same information. Is it the position of the AFP that there is no need for a wide-scale cross-jurisdictional database as an aid in the fight against serious organised crime, or is it simply that the things you seek can be equally achieved by other means?

Commissioner Keelty—It is the latter. We say that the systems in place do provide the opportunity for interjurisdictional access to the databases of need and that is largely through the ACC's ACID-ALEIN databases. In terms of a need for a totally separate system—perhaps the question is better posed with the CEO of the ACC, who can give you the detail of the databases—we would say that, currently, there is sufficient access. Obviously, the committee has had some examples given to it, which have probably led you down this path.

Senator MARK BISHOP—A number of officers at a state level have repeatedly made the assertion that crime crosses borders; that they do not know what is going on in Victoria or in New South Wales; that criminals go from state to state. They say that, in obtaining hard and immediate information when they are pursuing an investigation, the impediment is in the system in that there is not a national database. The criticism is at that level, not so much at your level. It is at a detective level, a sergeant level, a state level that the criticism is being made to us here not only publicly but also privately that the national database is a priority. I apologise for pursuing it, but there seems to be a real contradiction between what you are saying as a very senior officer and what the state police forces are indicating to us.

Commissioner Keelty—The deputy looks after operations so, if it is okay with you, I would ask that he answer this question, because he may be able to put some light on it at the investigator level.

Deputy Commissioner Lawler—I have also heard that commentary and the commentary for police at any level to be able to get access to information that might be held that could be relevant to their investigations. Without being in any way flippant about that, in some senses that—by virtue of my original explanation to you about the various bundles of information—is not achievable because there will be information where it is inappropriate and not in the public interest nor the national interest for that information to be available on data systems. That needs to be held by the respective agencies that are doing particular work in relation to matters that they need to know—and it is this need to know principle.

I am very supportive of systems that enable connectivity and the sharing of information where police need to know. But, as I say—and I said earlier—it is simplistic in one sense to think that one database will solve these problems, because quite frankly I do not believe it will. If we take, for example, an investigation where a serious cross-jurisdictional event has occurred that requires agencies to share. That is a very important and a very real need of law enforcement and it is in an investigational context real-time moving forward. We do not have that ability in Australia, except through the AFP's national PROMIS system. The way we are treating that at the moment is by cooperation. We have state police, Federal Police, ASIO, if it is a CT matter, working together in the one location inputting data on to the one system, which is the national system, which has connectivity across the jurisdictions. So that happens in that context. Where we have other operations, perhaps an active ongoing investigation, say, for example, between two jurisdictions, where the jurisdictions put their information into separate data holdings, separate investigational databases, that is a potential vulnerability, yes.

CHAIR—Can you give us a hypothetical example of what sort of information might be sensitive that is not either (a) security related or (b) terrorist related, which I guess is security related?

Commissioner Keelty—I can give you a hypothetical example. As the committee would know, the AFP involves itself or gets involved in political investigations or investigations of a political nature that we would not want to share with anybody. I think the deputy made a good point: there are also privacy limits to some of this that we need to take into consideration, because there are different rules, different laws applying in different jurisdictions about a whole raft of issues where the details might not be properly made available from one jurisdiction to another. Even in serious organised crime, it is more often than not undermined by corruption.

I am not saying that we have a big corruption problem, but I can tell you, giving evidence before this committee, that the deputy and I have seen a downloading of some data in the last 24 hours of the operation that we are doing with the Queensland police by somebody not authorised to receive it who is from another police force in the country. So it does happen. It is a real issue for us. There is a need to get the balance between what people need to know in order to carry out their function. But I will pay particular attention to this in the evidence that is given by CrimTrac and also by the CEO of the ACC because certainly, if this is a problem that is bigger than I am thinking, hearing and understanding it is, I am happy to take it up with the other commissioners.

CHAIR—It is something that has come through in a number of submissions. As I say, it defies common sense, although again thank you for the hypothetical examples you have given us, perhaps they do explain a few things. I just want to talk about controlled operations. We were going to do this at five o'clock with the A-G, but if we have five minutes now, if the committee is agreeable and you are agreeable, Commissioner, we might go into camera to talk to some evidence that has been given us to elsewhere in camera about controlled operations.

At this point, I thank the commissioner and the deputy commissioner for coming along and giving us the benefit of their very considerable experience and expertise in this area. Again, I am sure I speak on behalf of all the committee in saying what a fantastic job you do for Australia. I do not think a news bulletin goes by without some reference being made to the Australian Federal Police and the work they are doing, and the mind boggles how you are able to cope with all of these things. Perhaps that is why Senator Bishop was asking whether we need bigger police colleges to help you out in the wide range of activities that you are dealing with. Thank you very much. I declare this part of the hearing closed.

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

[2.08 pm]

BICKERTON, Mr Peter, Deputy CEO Operations, CrimTrac

CAHILL, Mr Matthew, Deputy CEO Support, CrimTrac

McDEVITT, Mr Ben, Chief Executive Officer, CrimTrac

McLAY, Ms Nicole, Chief Financial Officer, CrimTrac

CHAIR—Welcome. I know that you all have appeared before parliamentary committees previously, so I will not go through all the rules and regulations, suffice to say that this is a meeting of the parliament, so parliamentary privilege applies. If there is anything that you want to say or you may be asked that is of a non-public nature we can hear evidence in camera, should that be required. I do appreciate your appearance. Thank you for your submission and also the work you do. You have been widely praised by everyone who has so far appeared before us—congratulations. Mr McDevitt, I invite you to make an opening statement and then we will ask you some questions.

Mr McDevitt—Thank you for the opportunity to appear before the committee today and to make a submission. I have been with CrimTrac for about 18 months. Prior to that I was with the Australian Federal Police, where I was an assistant commissioner. I served with the AFP for about 22 years.

I know the committee has an understanding of the role of CrimTrac, but just to briefly reiterate: we are an executive agency, established by the Commonwealth government on 1 July 2000, to provide national law enforcement information systems for Australia's police services. Our aim is to enhance Australian law enforcement with an emphasis on information based policing facilitated through rapid access to detailed current and accurate police information.

The intergovernmental agreement, under which CrimTrac operates, required the agency to initially provide four deliverables. I apologise for the acronyms, but unfortunately we at CrimTrac are rife with them. The first system is the national fingerprint identification system, called NAFIS; the second is the national DNA database, which is known as NCIDD; the third is the national child sex offender system, or ANCOR; and the fourth is what is called the CrimTrac Police Reference System, which will become important as we go through this submission. The fourth system is currently in the process of being rolled out across the country—and I will go into that in a little more detail later. It is a system which provides rapid access to national policing data. The first three systems that I mentioned are established and operating, while the main component of the fourth, which is the minimum nationwide person profile, is currently being rolled out nationally after a successful pilot was held in two of the jurisdictions.

As you are aware, a number of the members of your committee visited CrimTrac last year to see our systems operating firsthand and to get a better sense of exactly how they work. I think they found that beneficial. I would like to extend a further invitation to you and your committee

to visit us at any time, should you so desire. It may be helpful to go into the systems and see exactly what information police across the country can currently access through CrimTrac.

While we will continue to deliver, maintain and enhance the four systems that I have referred to, we are now focused on looking at emerging police information requirements. More recently, under the CrimTrac strategic plan 2007-10, CrimTrac has been given a mandate by police ministers to take a leadership role in generating national approaches to information-sharing solutions for law enforcement agencies for a safer Australia. It is a fairly fundamental shift. The new vision takes CrimTrac from being purely an IT shop, if you like, to a broker for information-sharing solutions essentially for police jurisdictions but also increasingly for broader law enforcement. This is very important when we start to look at information sharing across the range of Commonwealth agencies involved in the law enforcement, border security and national security space.

The new strategic plan also requires CrimTrac to be proactive in identifying and investigating emerging information technologies and opportunities that would be beneficial to law enforcement agencies for consideration by our board of management. In effect, this means we need to be constantly scanning the environment, looking at existing and emerging technologies and determining whether they could perhaps be utilised within the law enforcement context and then putting up a menu of potential initiatives to police commissioners and police ministers. In the strategic plan that you have in front of you there you will see a list of potential initiatives which can be built upon; business cases can be put up and they can then be discussed by commissioners and police ministers.

As you will appreciate, the federated nature of policing responsibilities in Australia and the different context in which each of the police services conducts its operations adds to the challenges and complexity of the CrimTrac initiative. In the last 18 months it has become apparent to me—and I am not a technical person at all—that the technical challenges in integrating information from disparate systems developed at different times using different technologies can be quite complex. In my view, the procurement of IT systems by the police should be reviewed to ensure that, wherever possible, national solutions are delivered to national problems. In saying that, the technical challenges of integrating information systems are not as difficult as reconciling the diverse jurisdictional legal and policy frameworks that underpin our technical solutions. The fact that the national DNA database was officially launched in 2001 and was technically ready for business but significantly underutilised until the recent signing of a joint ministerial arrangement is clear evidence of that.

The most onerous challenges are not technical, legal or policy ones but cultural ones associated with individual and organisational stances on the sharing of information and on finding the balance between need-to-know and need-to-share principles. In the current environment there is a pressure to link data which can be linked. There is also a general recognition that the question is no longer whether to share or not to share; rather, it is what to share and how to share. That is where an agency, recognised as a trusted information broker, can add real value.

The successes already achieved show that CrimTrac is an excellent example of how the states, the territories and the Commonwealth can work together to harness technology for the benefit of Australian law enforcement and, ultimately, for the benefit of all Australians. We enjoy a sound

working relationship with state and territory and federal police services and with broader law enforcement. As information technology becomes more sophisticated, this relationship will be even more critical in meeting increasingly complex law enforcement requirements.

In my view, CrimTrac's strategic plan sets an ambitious but achievable agenda for servicing the future information needs of Australian law enforcement. The agency is relatively young, but I think its potential to contribute is enormous. With those opening comments, we are happy to take any questions or give you an overview of any of our systems, if you wish.

CHAIR—Thank you. As you may have heard on the grapevine, there has been some concern—certainly not about your operations—about the systems under which you operate and how there does not appear to be one national database that law enforcement agencies everywhere can attack. So we will ask you some questions about that. The information given us to by the AFP went a long way to answering some of the questions we had but they kept referring us to you. Let me start with a trick question. If there were only one police force in Australia—for example, if the Australian Federal Police did all policing work throughout Australia, would there be a need for CrimTrac?

Mr McDevitt—That is a very good question. There probably would be. The reason I say that is that I think the issues that we are dealing with in the modern era of policing, increasingly, go far beyond police, if you know what I mean. They actually involve a whole range of other agencies which also have very legitimate requirements for the sort of information that police traditionally would hold. For example, border security, Immigration and Customs have some very legitimate needs, so does the Australian Taxation Office and so on.

Coming back to your question, I think there will always be a need for an agency which can provide a conduit and connectivity between other agencies which express a desire and a need to share information. It is important to point out that the CrimTrac agency do not do investigations. We do not do intelligence profiles. We are a hub, an information broker and, quite frankly, all that we do is provide connectivity between agencies who wish to exchange data.

Another element to your question is around the sorts of systems that you may see if you did, for example, have a single police force in this country. I guess we have to be careful when we talk about databases, information sharing, connectivity, capabilities and so on. We need to resist the urge to go away and build another database and then another database. What we are about is capability. A good example is, in following the Cornelia Rau inquiry, the Palmer review and so on, a number of voices were calling for a national database for missing persons. It would have been a nonsense to go and build a national database for missing persons.

A missing person is simply a person of interest, and they are a person of interest because they are a missing person. That is an information set or an involvement in an information set on, say, the minimum nationwide person profile, which is being rolled out across the country and which, as of July next year, will give far richer information to police officers right across the country about that particular involvement, being a missing person. We need to resist the urge to race out and build databases.

Also, we have to be careful with this notion of centralised databases—single massive databases versus a federated type arrangement. We have to work out what we want to achieve. If

I am looking for the needle in the haystack, building a haystack does not help me. We have to have smarter ways of linking systems and of integrating existing databases rather than this notion of some massive centralised database.

If we did have a single police force in this country, one thing you would have is a single case management system or a single incident management system. I think this is where some of the confusion can arise. The databases that CrimTrac provide at this point are quite specific. One maintains fingerprints and one maintains DNA profile information. They are specific sets of information around biometrics. One holds specific sets of information around persons of interest.

CHAIR—But are they all accessible with one key stroke, so to speak, or do you need three key strokes for three different areas?

Mr McDevitt—The way it currently works is that each of the police forces has its own system for case management or incident investigation. For example, the AFP have the PROMIS system, which the Northern Territory police also use. The Victorian police equivalent of PROMIS is LEAP. The Queensland police equivalent of PROMIS is QPRIME. The New South Wales equivalent is COPS. The police officer investigating a burglary or a stolen motor vehicle, or whatever, will go in through their own front door. If I am working here in the ACT, with ACT policing, I will go in through the PROMIS system. I will make inquiries and I will write-off the burglary or the stolen motor vehicle. When I want to get information on a person of interest, I will go in through my own system, but CrimTrac does the work behind the scenes in getting information from those disparate systems and delivering it to the police officer in whatever jurisdiction they sit in.

We do not have a truly national case management system or incident management system across the country. Each jurisdiction has its own case management system and they do not talk to each other in any sort of concerted way. However, it would be fair to say that there are a range of instances where police from different jurisdictions do utilise a common system, such as the joint counterterrorism teams around the country that utilise the AFP PROMIS system, where you have the AFP state and territory police utilising the one system. That is an example, but that is actually on a smaller scale. We do not have that happening nationally. We do not have a single national case management system.

CHAIR—Does anyone who provides information to you automatically have access to all of your data systems? Is CrimTrac just one system, or do you manage these several data systems you have just been talking about?

Mr McDevitt—CrimTrac manages several data systems.

CHAIR—Not one system but several, and you manage the lot.

Mr McDevitt—Yes.

CHAIR—Is everyone who puts information into each of those databases automatically entitled to take information out?

Mr McDevitt—The jurisdictions have agreed on what information sets they want to share with each other. For example, they have all agreed that they will put up details of missing persons, persons wanted on warrant or persons with warnings and so on. They all put that information on to the system and then they can all consume that same information. Each of the police forces has full access to all of our systems and then there are a number of other agencies who also have access to one or more sets of information.

CHAIR—For example, would immigration have access to the persons of interest but not to the criminal databases?

Mr McDevitt—Immigration at this point do not have access to CrimTrac systems beyond some work that we are doing on the national fingerprint system.

CHAIR—I think you answered my question that those who put in information automatically have the right to get it back. Is that correct?

Mr McDevitt—That is correct.

CHAIR—Can you give us orally or can you provide for us all of the different agencies that input to your various databases?

Mr McDevitt—I think I can give you that.

CHAIR—None of this I assume is classified, is it?

Mr McDevitt—No. In terms of the application that we have, all police jurisdictions including the AFP have access. The Australian Customs Service have about 300 users. The Australian Crime Commission also have access. The Australian Securities and Investment Commission have about 50 users. New South Wales Independent Commission Against Corruption have about 60 users. The New South Wales Crime Commission have about 60 users. Queensland Crime and Misconduct Commission have approximately 50 users. They all have access to elements of the minimum nationwide person profile—that information which was originally the national names index. The national automated fingerprint identification system has about 900 users, which I think is confined to police jurisdictions.

CHAIR—Are you saying that it is not every policeman? Are you saying that it is every policeman but not every person in the Crime and Misconduct Commission, for example? Is it a nominated 60 people? When you say that 60 people are connected, is that 100 per cent of that organisation or is it only a percentage of it?

Mr McDevitt—It is only a percentage. There needs to be a demonstrated need to access the system.

CHAIR—Who makes that decision? Is it the organisation or do you make that decision?

Mr McDevitt—We make that decision with the organisation. They apply to have access to the system. For example, no police officer has access to the national DNA database. Access is limited to the forensic biologists who work in the laboratories with the DNA profile information.

CHAIR—So to get into your system they need a special code word or password or something.

Mr McDevitt—They have special access rights.

CHAIR—Only they can do that, whereas a junior constable cannot.

Mr McDevitt—That is right. The system that they will all have access to—when I say ‘they all’ I mean the 50,000 or so operational police around the country—relates to the minimum nationwide person profile system, which is the system focused on persons of interest. That one, when it is rolled out across the country, will be immediately accessible by police officers driving around with their in-car computer or those in the station, through their network.

CHAIR—We have been given the example by the police federation—although it was queried by the AFP—of a guy wanted on two murder charges in Victoria who turned up in Western Australia where he was arrested or approached by a policeman about not paying his petrol bill who got shot for his trouble. The suggestion was that the Western Australian policeman made inquiries but the inquiries did not reveal that this guy was wanted in Victoria for possible murder charges. Are you familiar with that? I am not sure whether we should talk about specific cases, but should that have happened or should the system have been able to identify someone in one state who was wanted for murder in another state?

Mr McDevitt—I guess, without referring to a specific case, this really comes down to your getting value. You can only get out what you put in. If a jurisdiction wants to put in information in relation to a person of interest, then certainly the current capability will allow for that information to be shared across the country through the MNPP, when it is rolled out across the country by July next year. At the moment that information can be shared through what we call the national names index, which has specific criteria whereby you can flag an individual as being a person of interest, as in the example you gave, so that there is a warning out for them or they are wanted on a warrant or whatever. Certainly with that information that name can be tagged and can be available to police right across the country.

CHAIR—So, in the hypothetical example I am giving you, if a murderer from one state is not flagged and able to be found in another state, are you saying that there are two causes? One is that the state in which there was the murder has not put in the data; the other alternative is that the state that is looking has not looked properly.

Mr McDevitt—I would like to think that, if the state that is looking put the name in, we would be able to bring up all of the linkages to that particular name, and that depends on your searching algorithms and the capability of the system, which is quite sophisticated. For various reasons, sometimes investigating police do not want to flag their interest in an individual or they do not want other people—other people being other agencies or whatever—to know that they are doing a particular investigation or whatever. There may be a range of reasons that a name is not flagged as a warning or as being wanted or whatever.

Senator PARRY—Can we just come back to this? I think it is worth highlighting this specific case because it is an actual case that has obviously received some publicity. The individual was in a vehicle. The vehicle was wanted and the person was wanted. A warrant had been issued, I understand. When he was in Western Australia he was pulled up by a local senior constable—it

was to do with non-payment of petrol. We do not know the details at that end, but assuming that a registration number was provided and if we take that instance first, is there currently anything, even under MNI, that would flag the registration number to a linked crime in Victoria? Does that exist through CrimTrac? That is the question I ask.

Mr McDevitt—No.

Senator PARRY—The second one is: if that person's name were associated with a murder and a warrant, would that name then be accessible by simply a radio transmission or a computer check from a field officer in WA back to, I assume, WA headquarters or WA information sources? Would that be instantly known, or would a separate search beyond the borders of WA be required in a particular search to CrimTrac?

Mr McDevitt—In theory, that information should be available to the officer in WA through the National Names Index as long as the flag has been raised by the other jurisdiction.

Senator PARRY—So is it standard protocol in every police jurisdiction that when a name is radioed back to base a National Names Index search is undertaken? Would that be standard practice?

Mr McDevitt—That is my understanding.

Senator PARRY—So the falling out here could be that that was not done or the reporting jurisdiction did not have the name flagged. They would be the two areas where it could have fallen down.

Mr McDevitt—I am not aware of all the facts of the case but they are two possible scenarios as to why.

Senator PARRY—Another one was reported yesterday in the media, and this is why we need to understand whether CrimTrac is working or whether it is an issue somewhere else—and I accept that the minimum nationwide personal profile has not been rolled out. Yesterday I think it was reported in the *Cairns Post* that a man had committed a murder in New South Wales and a warrant was issued for his arrest some time back. He was involved in a motor vehicle accident in Queensland and, when his name and whatever were searched, the warrant did not appear and this man is now still at large. A criticism of the police jurisdiction was that it did not know that a warrant had been issued for his arrest in New South Wales. Is that a CrimTrac matter or, again, is it the same scenario as with Victoria and WA?

Mr McDevitt—When you ask whether it is a CrimTrac matter, CrimTrac is merely the conduit. We do not put any information onto the system. All we do is provide the connectivity so they can share the information. The jurisdictions have agreed on 11 datasets or involvements that they will share, one of which is warrant information.

Senator PARRY—Just stopping you there, that is not rolled out yet, but MNI does have warrants—according to your submission anyway.

Mr McDevitt—Yes.

Senator PARRY—So, in theory, if everything had gone according to operational standards that name should have been flagged on every police jurisdiction database—if everything had been followed correctly?

Mr McDevitt—In theory, that is what should happen. Police commissioners around the country obviously want their officers who are working on the ground to be able to very quickly determine whether the person they are dealing with is wanted on a warning or a warrant or has a criminal history or whatever it happens to be. That is the reason they have agreed to load this information onto a system so it can be brokered across the country.

I guess one point that I really do want to reinforce is that I think in 12 to 18 months from now we will actually be in a much better position to see what really is available for police around the country in terms of the MNPP and what it actually can deliver. The example that I could give you is around missing persons. With the old NNI system, if I were a New South Wales police officer investigating a person who went missing in or from Queensland, say, if I went on to the NNI—this is what is available right now to the New South Wales police officer—about the Queensland missing person, it would bring up one line and that would say ‘missing person’, the fact that the person is missing.

The minimum nationwide person profile will give far richer set of information around that missing person. I am using missing persons, but the example goes across the lot in terms of warrants, warnings and everything else. So it will say, ‘Yes, the person is a missing person and this is when and where they went missing. These are the circumstances and this is their mental state as per the report. This is what they were wearing and this is what they were carrying with them,’ and so on. It will be far richer information. The MNPP is light years in front of the NNI. That is why it is our very keen desire to get this thing rolled out as quickly as possible across the country.

Senator POLLEY—We have heard the pros and cons concerning a national database. I am interested in whether you have sighted the police association’s submission regarding their belief that CrimTrac could be expanded and whether you support that.

Mr McDevitt—I think where they seem to be going with that is that the 11 involvements that I referred to could technically be expanded. For example, one of the involvements at the moment is gun licences. I am a person of interest on the minimum nationwide person profile because I have a gun licence. That is one of the agreed involvements. If the police jurisdictions agreed and wanted to expand that dataset, they could. For example, there would be no reason why technically the MNPP could not include someone as a person of interest because they were the owner of a pilot’s licence or because they held an explosives licence or because they had an ASIC or so on. I think the point the Police Federation is trying to make there is that there are opportunities to expand that dataset, that set of information that is shared by jurisdictions across the country.

Again, it is important to remember that the MNPP is not a centralised database. We are not talking about a centralised database. It is a federated database which hooks up a number of agencies that want to share information. An analogy I use is a house and a porch, if you like. The agency will put on the porch the information it wants to share but you cannot go into the house. That is really the way this sort of federated database works.

Senator MARK BISHOP—Say I am a Victorian policeman and I want to know whether Mark Bishop in Western Australia has a licence to hold a handgun. When the 11 sets of information are up and running, would a Victorian policeman be able to go in and access that information?

Mr McDevitt—Yes.

Senator MARK BISHOP—So what I am hearing you say then is that you have the genesis of a restricted national system of uniform material going in.

Mr McDevitt—That is exactly right. That is why I am saying that we need to resist the urge to build additional databases. You have a technical platform there now to be able to share that information amongst police across the country. The issues are issues around identifying the need to share the legislative, policy and privacy issues and so on to then enable the technical work to be done to share the information around whatever set of data it is that you want.

Senator MARK BISHOP—And presumably the system has a capability for significant expansion over time if the relevant agencies deem it appropriate to add further datasets of information?

Mr McDevitt—That is correct. This is the spine, if you like. The main things that police want to know, obviously, when they are investigating crime are things about persons of interest. They have agreed to share the 11 sets of information around persons of interest. Our aim next is that after persons it is about vehicles of interest. We want to create a similar thing for vehicles to put next to the person system and then we want more detailed information in relation to firearms as well.

Senator PARRY—Can you then link people to vehicles? If you knew you had this person in that vehicle, could they be linked?

Mr McDevitt—That would be the ideal. I think that is what police officers around the country need. If they are pulling over a vehicle that has a plate that is not from their jurisdiction, they should be able to immediately access and have available to hand information about the registered owner of that vehicle, licence information and so on.

Senator MARK BISHOP—Can those 11 sets talk to each other? If, for example, a police force in Queensland is pursuing inquiries as to people who might be accessing explosive material, can they go in further and check whether the people have access to handguns and other pertinent information to get a picture?

Mr McDevitt—At the moment, the way it would work—

Senator MARK BISHOP—When the 11 sets are in and running.

Mr McDevitt—You would put the name, say, Ben McDevitt, into the system in whatever jurisdiction you are in and the system will bring up on the front screen that Ben McDevitt has holdings in three or four jurisdictions and that those holdings are across one or more of those 11 involvements that I was talking to you about. So you will be able to see straightaway that he has

been reported as missing, he is also wanted on warrant, there are warnings on him, he has a criminal history and he also has a gun licence. That will all cascade down on the one screen.

Senator PARRY—I am surprised you got your job!

Senator POLLEY—How does CrimTrac compare with the systems in Canada—for instance, the national database system that they operate there—the US and the UK?

Mr McDevitt—I am sorry, but I am just not familiar enough with their systems, although I certainly know—

Senator POLLEY—Do you have liaison with them, because technology is obviously advancing all the time in terms of parameters and frameworks that perhaps you can learn from?

Mr McDevitt—Yes, we certainly do. Only a couple of weeks ago, Mr Cahill and I visited the RCMP and the FBI specifically in relation to their fingerprint systems. Yes, you are right—there is a lot to be learned. We have a pretty strong alliance, particularly with the UK, the US and Canada in relation to where they are going with particular systems and what sorts of solutions to information sharing they are coming up with. Certainly in the US, where you have 18,000-plus law enforcement agencies, it is a far more difficult sort of environment than it is here. That is not to say that we do not have issues here.

CHAIR—You pre-empted a question that our colleague Mr Wood would have asked had he been here about ammonium nitrate fertiliser licences, aviation security identification cards, maritime identification cards and explosive licences. I take it that they are not dealt with at the moment. Is that correct?

Mr McDevitt—That is correct.

CHAIR—Do you know why that is? Is it being addressed?

Mr McDevitt—They are really policy issues and not for me. CrimTrac provides the technical solution. If the demand were there for holders of ASICs to appear on the MNPP, we would deliver the technical solution to that. But, as for arguing the case for that to occur—

CHAIR—I accept that it is a policy question, but has that been sought from you? Perhaps I could digress for one minute. You physically do not have any role in the actual search; it is all done by computer, automatically. They do not ring you and say, 'Hey, do you know Ian Macdonald? It has this here; what does it mean?'

Mr McDevitt—No.

CHAIR—It is all done by computer?

Mr McDevitt—That is correct.

CHAIR—Do you get a call? Have you, through your connections with your import and export agencies, been asked for or spoken to about ammonium nitrate and aviation security? It would seem to be a matter of common sense that they should be on there.

Mr McDevitt—It certainly has been raised in several different forums, I think particularly with the system that does the criminal background checking. Increasingly that system is utilised more and more. In my view, there are some real vulnerabilities in the reliance that we place in this country on a name based criminal history check when giving somebody a clean bill of health to work in a particular sector or whatever. If you imagine going into the MNPP and looking at the 11 involvements, one of those involvements is the fact of a criminal history. The fact that I have a criminal history gives you some information about whether or not I would be inclined to commit offences in the future, but it does not really give a decision maker a full picture of my propensity to commit crimes in the future. If you did have access to other elements or if decision makers had access to other elements of that dataset or potential dataset, potentially there is richer information available so that more informed decisions could be made.

CHAIR—But do the people who issue aviation security identification cards, maritime identification cards and explosive licences have access to your databases?

Mr McDevitt—As part of the background checking process that they will do—and there will be several elements to it. It might include a national security check. It will probably include an interview process, questionnaires and all those sorts of things. Part of that will be a background check, criminal history check, which will be brokered through CrimTrac.

CHAIR—By the local application you say?

Mr McDevitt—They would come through one of the police agencies normally. It would then come to us and we would then bring together the information.

CHAIR—So the department of transport, who I assume issues aviation security identification cards and maritime identification cards, does not have direct access to CrimTrac.

Mr McDevitt—That is a little different. In that case what happens I think is that AusCheck coordinate the issuing of the ASICs and MSICs and they actually have a conduit into CrimTrac for us to do the criminal history check for them.

Senator PARRY—And that is on the basis of fee for service for each agency, isn't it?

Mr McDevitt—Yes.

Senator PARRY—If we go back to Ben McDevitt with all these flags against your name, if the MNPP were running, could someone in your organisation tailor that? Looking at corruption issues, could someone tailor that? Could someone doctor a record? Could someone reduce information—or is it the integrity of each individual agency that manages these individual data basis?

Mr McDevitt—It is both. As I say, we provide the connectivity. The data integrity issues really sit with jurisdictions in terms of the information or the integrity of the information that

they are putting on to the system. As I say, the MNPP is not actually a centralised database, so we do not hold the information. But certainly we have very powerful audit tools. We can audit every access to the system and so we can very quickly backtrack and find out when an access has been made.

Senator PARRY—Would the weak link be at the input agency area?

Mr McDevitt—Yes.

Senator PARRY—Do your officers have the ability to alter the databases of, for example, firearms? I would imagine they would be run on an individual state basis and then you have access to each of those individual firearms' record databases, which is what you then provide when you do a wholesale search.

Mr McDevitt—Yes, that is right. Really I guess you are as strong as the weakest link to some extent or as vulnerable, which is why we place such emphasis on data security and data integrity.

Mr Cahill—Perhaps I could add to that. We also have fraud control plans in the agency. One of the major areas obviously is someone who could take benefit from accessing our systems within the agency to be able to gain a benefit. We look at our controls regularly to make sure that the staff cannot inappropriately access the systems and gain some sort of advantage. That is something we take quite seriously in the agency.

Senator PARRY—That is good to hear. I imagine that that would be an area where organised crime could infiltrate by having someone on the inside. There is a lot more strength in not having a central database in that sense, too.

Mr Cahill—Again, what we do is take national security clearances for our staff and also look at the controls, recruiting and access to our systems to ensure that there is not inappropriate access, as well as have our own internal audit and everything else to ensure that. That is probably something that we are quite cautious about and focused on because it is at the core of our agency.

Senator POLLEY—What is the time delay in terms of somebody who inappropriately accesses the database? We heard evidence from AFP this morning about how, over the last 24 hours, information has been downloaded inappropriately. What alarms go off within your system?

Mr Cahill—Again, if an access has happened from another police force, they monitor their own access in that regard.

Mr McDevitt—I guess the difficulty for us is that, if somebody in a police force accesses the CrimTrac system—for example, they put in a name and get information about an individual—at our end we do not know whether that person has a lawful requirement for that information. So we are heavily reliant on the point of access and the integrity of the system within the jurisdiction itself. We actually will not know. We will know that somebody has accessed the system and got information on a particular name and we could tell you the date and time that that

occurred, the access log on and so on, but we would not know in the middle, at the hub—that the person at the end of that was not lawfully entitled to do that particular search, for example.

Senator PARRY—Let us just say that the Australian Crime Commission is investigating, say, three individuals, A, B and C. CrimTrac detects that a couple of police officers are inquiring into A, B and C but not as part of the investigation. Would that just create a pattern or an alarm by which you could then alert the ACC? Does it work that way or not?

Mr McDevitt—No, we would not have that level of knowledge about who was involved in a particular investigation.

Senator PARRY—Could the ACC contact CrimTrac and ask whether any police officer had expressed interest in A, B and C? Is that a search you would do?

Mr McDevitt—Technically they could, yes.

Senator PARRY—Would you provide that information?

Mr McDevitt—We would.

Senator PARRY—We have had criticism that there is no national database, for want of a better phrase. That has come up time and time again, as the chair mentioned earlier. You are telling us, basically, that what the police jurisdictions have been asking for will be rolled out by July next year. That is the bottom line, I suppose.

Mr McDevitt—Not quite. I think there are two elements to it. The MNPP will provide a platform or a vehicle for exchange of information about persons of interest. If police jurisdictions want to increase the dataset available there or the reasons why someone is a person of interest on that system, that is a capability and something that could be explored in the fullness of time to add to that breadth.

The other element to this sort of national database is the issue that I spoke about earlier: case management systems and incident management systems. If you think about policing, that is the backbone that everything else is about. It is about: 'I'm going to a burglary. This is so-and-so's house. There is a car outside. I want to know about the car. I want to know about the people and all sorts of things. I want to know about fingerprints and DNA.' So ultimately everything links into the case management system or the incident management system. You will see in the strategic plan that was signed off by police ministers last year that we have flagged a potential opportunity to explore a national case management system, which would be a system that police officers across the country could utilise for incident management.

To be totally frank, each of the jurisdictions is well advanced with its own case management systems at this point in time and has its own plans for renewal of those systems and so on. So, while it is flagged and accepted that in time there might be agreement and a need to have that, we are probably some time off in actually getting sign-off to do something like that. Quite frankly, you would have to get commitment like: in 10 years time, we are going to flick the switch on a national case management system. What do we need to do now? Who do we need to bring together now to make that occur? So there are the two different aspects.

Senator PARRY—But, by and large, the MNPP will be your platform for expansion for a centralised information clearing house, until you get to the case management process.

Mr McDevitt—Yes, it is. There are about 13,000 users of it already who are attesting to the fact that it is an extremely powerful tool.

Senator PARRY—Take the warrants issue, for example. If warrant information is recorded in each state jurisdiction, is it then downloaded to a federal jurisdiction or do you guys just tap straight into the local jurisdiction database?

Mr McDevitt—We would just tap straight into the local jurisdiction. It is a federated system. Where it becomes awkward, I guess, is that there are different types of warrants in different jurisdictions, whether they are bench warrants, first instance warrants, commitment warrants and so on. So there needs to be agreement and alignment of the type of information that they are going to provide on the system.

CHAIR—Thank you very much for your time and submission. Also, thank you very much for showing us through your place and for the invitation to come back. We will certainly try to take that up. I suspect we are not going to have time between now and November but perhaps after that.

[3.11 pm]

MAKKAI, Dr Toni, Director, Australian Institute of Criminology

McCUSKER, Mr Rob, Research Analyst in Transnational Crime, Australian Institute of Criminology

CHAIR—Welcome. You come to us well recommended by previous witnesses who, when asked the difficult questions, said, ‘I’d ask the AIC that, if I were you,’ so we have been anxiously awaiting your attendance. Thank you very much for your submission and for coming along. Do you want to make an opening statement?

Dr Makkai—I would like to take the opportunity to make an opening statement.

CHAIR—Please do.

Dr Makkai—First of all, I thank the committee for asking us to appear here today. As you can see, Mr McCusker is attending along with me. He is our transnational expert on organised crime and has written a number of reports in this area. In our submission we focus solely on the most recently publicly available threat assessments and identify what we regard as the three key strategic issues to emerge from those assessments. These are the types of crimes that organised criminal networks are likely to be involved in and the most likely means by which they will continue to conduct their illegal activity—most notably money laundering. We also identify strategies for countering such activity, including how law enforcement and intelligence agencies might be structured, as well as encouraging analysts to think outside of their traditional methodologies. The third key area that we speak about is the need for law enforcement and intelligence agencies to have strong linkages to improve efficiency and effectiveness—without creating a monolithic bureaucratic structure, which will in itself impede creative thinking—and the movement of information rapidly from the bottom to the top of the hierarchy.

I think it is important to note that, although the most recent public assessments are from overseas, the history of crime in Australia is that overseas trends will appear here; therefore, identifying these trends and disseminating that information is an important part of our work. On a routine and regular basis, we deal with requests from Commonwealth and state and territory law enforcement and intelligence agencies and from the attorneys-general for research information and knowledge. Quite often those requests are about what is happening overseas.

As a research agency, we are not in a position to comment on operational and tactical matters. However, we do provide input into the ACC’s intelligence assessments, attend their intelligence forums and comment on their picture of criminality from a research perspective. For obvious reasons, these consultations are undertaken on a confidential basis. However, it does highlight the close working relationship between the institute and various law enforcement agencies as well as the Attorney-General’s Department. The nature of this relationship is that not all of our work results in publications and some of our reports for specific agencies are not publicly available. A great deal of our research work today is funded by other agencies under a contractual arrangement. Given the institute’s annual appropriation of \$5.3 million, careful

decisions have to be taken about how we spend the appropriation. As the ACC is tasked with providing the picture of criminality and we already input into that through our confidential comments on their report, we do not want to duplicate their efforts. We also need to acknowledge that the research data in this area is not as well developed as it is for more traditional crimes, like property and violent crime. We do not have reliable and valid crime statistics in the same way, nor do we have extensive victimisation surveys. Data infrastructure really needs to be built in this area.

We identify in our submission that cybercrime is a potential area in which organised criminals may become involved, although the extent to which this is the case is debatable. In order to improve our understanding of cybercrime, the institute recently received funds from the proceeds of crime to examine the extent and impact of computer security incidents across all Australian industry sectors. This will be the first random survey of this scale and depth in Australia. We have completed our pilot and are now proceeding to conduct the main survey, which will be of approximately 20,000 businesses, but it will be another year before that is finalised and completed and ready for release.

We also identify in our submission the need for intelligence sharing, as well as links to the research sector. Although the AIC maintains a watching brief on transnational crime, we do not have routine access to either Commonwealth or state and territory criminal justice databases. To a certain extent, our capacity to produce new and innovative research is dependent on these agencies enabling access to the relevant materials.

With new money provided to the institute in the recent budget announcement, we are going to be embarking on a four-year program of research with AUSTRAC on issues relating to the implementation of the Anti-Money Laundering and Counter-Terrorism Financing Act. This builds on a small piece of work which Rob undertook in 2005 on remittance systems. Also, we have a paper being released shortly, funded by the Criminology Research Council, on money laundering.

We have also done some work historically on online child pornography, and we produced a report in 2004 on this issue. That material was used by the Australian High Tech Crime Centre in developing the preamble for the search warrant for suspected persons involved in online offending during Operation Oxen in 2004.

Intelligence assessments consistently identify involvement by organised and transnational criminal groups in illicit drug trafficking as one of the major threats. Since 1999, the institute has been monitoring police detainees on their use of illicit substances, using both self-report and urinalysis testing, on a quarterly basis. Last month the Minister for Justice and Customs released the annual report for 2006, and that contained information on over 4,500 police detainees at selected sites across Australia. That data is unique; it is not available through any other means, because it uses both self-report and urinalysis testing. It showed that 55 per cent of those detainees tested positive to cannabis, 23 per cent tested positive to methamphetamines and eight per cent tested positive to heroin. The research has been ongoing since 1999, and it has been monitoring the increase in methamphetamine use, particularly between 1999 and 2003. It also highlights that drug markets vary across Australia. The markets in Sydney are different from those in Perth or Adelaide, for example. This dataset provides a great deal of information on how offenders access illegal drug markets, the kinds of crimes they are engaged in, their use of

weapons, their prior contact with the criminal justice system, their access to treatment and their history of mental illness.

We also identify emerging illicit drug trends on the street. All of this information is provided confidentially to law enforcement and Customs through our confidential website on a quarterly basis so that they can respond to that in a timely fashion. I have here for you a copy of the annual report which the minister released last month. I should also say that our data is picked up by the United Nations. For example, on Monday the UN released its 2007 *World Drug Report* and that data is fed into that process.

To conclude, one of the difficulties or challenges for us is getting our research to influence policy and practice. We have been trying to do this through the informal exchange of information and knowledge—the kinds of arrangements I have been talking about. We have been locating our analysts in policy and in the operational environments so that they get better informed and they can then inform the people they are working with about the latest research and what it is showing.

We have run a series of closed roundtables so that law enforcement in particular can come together and talk about things in a confidential way, not in the public arena. We also run open public conferences on issues. We do the standard thing of publishing our material. We also have moved towards trying to do shorter facts sheets. I have here for you a set of our high-tech crime briefs, which are much shorter, we hope, easier to read and more targeted on a specific issue and, therefore, they will be more likely to be picked up, particularly by practitioners but also by busy policymakers. We sit on a number of national boards and councils, such as the Australian National Council on Drugs and National Crime Stoppers. We participate internationally through the program network institutes of the UN and we attend the UN Crime Commission meetings as part of the delegation led by the Attorney-General's Department.

All of this is really trying to address that third key issue that we mentioned in our submission, which is about having better linkages across the criminal justice sector. We believe that, if we do not have these linkages, if we are not able to get policymakers and practitioners to take notice of the research and the evidence base, we will not be able to improve the efficiency and effectiveness in terms of our responses to serious and organised crime in Australia.

CHAIR—We should get together with you more often and use your knowledge to try to influence policy. Before I pass to Senator Bishop—who I know will want to follow up on some things he was talking about this morning; he was told you were the people to speak to—could I ask: how many of you are there? Your budget is \$5 million, you say. What does your organisation consist of?

Dr Makkai—We consist of about 50 or 55 people. The size varies on the contracts because, as I mentioned, we do contract work. Last year we brought in over \$2½ million in additional funding on specific contracts. The number of people goes up and down depending on the kind of contract work we do. In addition, we can do contract work where we might subcontract. For example, there is the cybercrime survey. We are not running that in-house because we do not have the expertise to do that. We will subcontract to someone else, but we will manage that whole process.

CHAIR—Are your people all researchers and analysts or criminologists?

Dr Makkai—They are mainly researchers and have a mixture of backgrounds. Rob, for example, has a legal background; I have a sociology background. We have anthropologists, economists, geographers, psychologists and so on. We have a mixture of backgrounds on the research side. However, another core output that we have is dissemination, and we have quite a big dissemination arm as well. We have our national library, which is the largest crime and justice library in the country. Then, of course, we have all the work that goes into producing the trends and issues in the papers and so on, and running the conferences and roundtables; we have staff to do all of that as well.

Senator MARK BISHOP—We have been having a discussion with the witnesses or the groups about the utility of a national database in a centralised manner. I think it was the AFP this morning that suggested we raise it with you. Can you offer any observations on current developments with respect to exchange of information amongst and between the various police forces in the context of serious and organised crime? In addition, does your organisation have a view that the current system is evolving satisfactorily or that we should be taking a quantum leap and going down the path of a new national database?

Dr Makkai—From a research perspective—and this is different from an operational perspective—

Senator MARK BISHOP—Can you answer it from both perspectives?

Dr Makkai—From an operational perspective, they want real-time information when they are doing investigations. So the CrimTrac model is a very good model because it allows anyone, in theory, anywhere across the country to link in to access the key databases and to get the information they need on the spot. Research is a bit different. Often we want to get detailed information at the individual level data. By that I mean that we cannot do our work with aggregated statistics. We need to get the record of the individual, but then we aggregate up. So we need to create a database to then analyse it. It is a different kind of process to an operational need.

The notion of creating one national database on every person who has any contact with the criminal justice system I think would be extremely difficult to do. What you would do is what we have been doing—that is, creating what we might call minimum datasets. At the institute, for example, we have a database on all homicide offenders, victims and characteristics of the place. That is a specialised dataset. We get information provided to us by all the jurisdictions. We clean it, edit it and transform it so that it is useful for research purposes. Then we collate that information and produce reports on homicide, which are then used by homicide squads at more a strategic level than an operational level. They are really two very different processes. I just think that trying to create one national database from a research perspective would be incredibly expensive and time consuming, and I am just not sure that you would get value for money from it.

Senator MARK BISHOP—Mr McCusker, do you have a view on the question?

Mr McCusker—I think it depends partly on what the national database is going to hold, first and foremost. If it is going to hold details on organised crime syndicates or people of interest or particular crime types and their developments, that is one thing. If it is going to hold details on all criminals who may or may not be involved in organised crime, that is a different issue. It also depends on when you have the data and what you do with it in terms of analysis. If the analysis is carried out in a non-universal way, if it is staffed by people from different jurisdictions, different backgrounds, there is a danger that you could actually end up creating a sort of data haven, whose utility, as the director has pointed out, is debatable and limited. The Department of Homeland Security is not exactly a database but is deemed a one-stop shop for intelligence gathering post-9/11. But the structures in the Department of Homeland Security are so horrendous hierarchically that there is a danger and, I think, a feeling in the United States that sometimes the information does not get through with the alacrity that is needed in transnational crime terms.

Senator MARK BISHOP—From the take that is coming through the press, there appears to be a monstrous bureaucratic hole where information is deposited but not accessible or not readily accessible.

Mr McCusker—I have brought along, for your delectation and delight—because I know how much time you have on your hands—virtually every document cited in our report, plus some other ones. I have also included the structure of the Department of Homeland Security. The structure itself has about 14 levels, but each of those 14 levels has sublevels comprising between seven and 14 levels. So your point is quite right: it gets lost. It was a laudable idea, but the sad fact is that the pre-existing intelligence agencies—I think there are about 14 or 15—still exist as well as the Department of Homeland Security because, as often happens, they did not want to cede their experience, knowledge and expertise to one department because, quite rightly I suppose in one context, they all think they can do the job better or as well as the others.

Senator MARK BISHOP—Dr Makkai, you said that you had or were trying to have some of your people embedded in policy units and operational units with the various police forces so they could get exposure to what they are doing and there would be a useful exchange of information between you and them at a theoretical or research level in the field. Have your people, when they have come back and reported to you, picked up issues that go to either complaints or the utility of accessing information by the various police forces via the current database systems, or is it a non-issue to you in terms of reports?

Dr Makkai—What comes back is this difficulty, from our point of view. We obviously look at it from a research point of view and we want the best quality data, which is a little different from intelligence data. Often intelligence data does not have to have, in a sense, the purity that we demand before we accept it as being of sufficient quality to meet research standards. So there is a difference when we go into an agency and we access the data. That is what I mean. We take data and then clean it and massage it, in a sense, and we transform it, because we need it to be of a certain standard, which at an intelligence level may not be necessarily the priority. The priority is to deal with the issue at the time. You have to make decisions on incomplete information. You do not want to be sitting around and saying, ‘Well, we had to clean the data and we had to look at this and we had to look at that,’ before you make a decision, particularly if an incident were about to occur; whereas in research we have the luxury, in a sense, of standing back, taking the data and, as I said, cleaning it or looking at it, going back, asking for more pieces of information,

linking it to other pieces of information and so on. So the frustration for our analysts sometimes is that the data is not as clean as they would like it to be when it is in operational agencies—but that is the nature of those agencies.

Senator POLLEY—In terms of technology—and this morning we heard evidence in relation to cybercrime—where do you see the challenges and the changes that we need to make? Can we learn from overseas, like the US, the UK and Canada, for instance, for your research?

Mr McCusker—I think the key challenge is in trying to establish what we are talking about when we talk about organised cybercrime. The term is used so frequently and so imprecisely that sometimes we might not know what we are talking about in terms of either a denial of service attack by someone, who happens to be a criminal, operating online or traditional organised crime groups fully migrating online. That is the first point: we need to establish exactly what we mean by ‘organised cybercrime’. Is it traditional organised crime groups engaging in online behaviour, or is it criminals operating online who happen to be organised? To a certain extent, all engagement online has a degree of organisation to it, because one of the reasons criminals, whether organised in my sense or just sophisticated in another sense, operate online is that they gain advantage over the sort of real world dwelling criminal.

Once you get over that issue, you then have to work out whether or not law enforcement’s approach to dealing with this type of technology is up to speed. In the Australian context it certainly is, and it is probably the same in the UK, in the National High-Tech Crime Unit. The difficulty, though, in all approaches to tackling technology involving crime is that we still have a massive gullible public who make the job extremely difficult. Until we can tackle that issue through education campaigns and so forth, law enforcement efforts in this area will be constantly scuppered. That is not to say that we should not keep pursuing this line, because it is becoming a very serious form of criminality. Even the most inane attacks can cause massive economic harm. If traditional organised crime groups do elect to go full scale into that environment, I think, given their expertise in the real world, we could have some potential difficulties there. I am not convinced—and I think the jury remains out on this—that at the present time traditional organised crime groups have the necessity to engage online, because, contrary to popular opinion, they are highly risk averse. They are enterprise driven. If they can gain their ill-gotten gains through traditional crimes, such as drug trafficking, there is no real incentive for them to engage fully online.

Senator POLLEY—If we can turn to money laundering, on which you have obviously done a significant amount of research, have you seen any changes over the last decade in terms of trends towards more legitimate businesses being infiltrated with money laundering and organised crime?

Mr McCusker—There was certainly the feeling at the Financial Action Task Force in Paris and the equivalent jurisdictional organisations, such as the Asia-Pacific Group on Money Laundering—and this was identified 10 years ago with so-called professional service providers—that lawyers, bankers and accountants were in many cases wittingly engaging in money laundering on behalf of clients, and on some occasions unwittingly. There is certainly a move, I think identified by the FATF, to exploiting businesses, either hijacking online bank accounts, for example, or, as in the case of ‘Russian’ organised crime—and I am putting that word in inverted commas because it is an inappropriate name for the type of organised crime I

am talking about; it does not really emanate largely from Russia anymore—they have a history of, for example, getting people elected or bribing people who have been elected to the state дума, the state parliament, precisely to derail money laundering legislation going through the parliament at that time. The level of sophistication is very high.

Because businesses engage online and business security generally is not a top priority of many small to medium enterprises, the possibility of those systems being taken over either through botnets or something less sophisticated—an employee placed on the inside—could actually facilitate an increasing use of the internet for payments. The FATF—and I brought the paper along for you to have a look at—have identified new payment technologies in a recent threat assessment where they are talking about the increase of internet banking for money laundering, the increased use of mobile phones, and those sorts of issues.

Senator POLLEY—In relation to banking fraud, do you believe it should be mandatory for the banking institutions to have to report it so there is a register?

Mr McCusker—Report money laundering?

Senator POLLEY—Fraud through the internet or credit card fraud. Do you believe there ought to be mandatory reporting by the banking institutions?

Dr Makkai—Certainly from a research perspective we would like to know the data. It is, for example, one of those crimes that we know is grossly underreported to police and, as a consequence, we do not have any idea of the size of the problem. As researchers, we would welcome much better data.

Senator POLLEY—That would help with the education process, I would have thought. Do you have any comments?

Mr McCusker—It is exactly as the director has said. There is a history of fighting all sorts of fraud and a reputational risk fear by banks in particular. One of the first organised crime exploits was against Citibank where a student employed by a Russian organised crime group in St Petersburg took Citibank online for about \$US8 million. It was not reported because of the fear factor of what the customers would think. The corollary of that, of course, is that law enforcement cannot effectively fight this type of fraud and this kind of online activity unless they are made aware. That is perhaps—and it is something your other submissions have probably dealt with—where an increased relationship between the private and law enforcement areas is going to become increasingly important. We cannot do it without each other's help.

Senator PARRY—On that point, is it by volume or quantity that banking fraud is grossly underreported? You gave the \$US8 million example. Is it the gross value dollar value or numerical value—the number of incidents?

Dr Makkai—We do not know. What we have are crime victim surveys where we have asked people about fraud—whether they have been a victim and whether they have reported—and less than 20 per cent report to the police, for example. They do go and report to the bank but we do not know the extent to which the bank reports to the police. We know that it is significantly underreported.

Senator PARRY—That leads me to my next question. How do you actually collect your data? How do you do your research? How do you validate what you are telling us as kosher?

Dr Makkai—There are a number of ways. With the crime victim surveys that is a face-to-face interview which we conduct with a person and ask them about being a victim of crime.

Senator PARRY—How do you source these victims?

Dr Makkai—Random samples from the community.

Senator PARRY—Telephone canvassing?

Dr Makkai—You can use telephone or you can do door-to-door surveys. We do telephone because it is very expensive to do door-to-door interviewing so we rely on telephone surveys. There is increasingly a problem with that—mobile phones. When we do the telephone surveys we do random digit dialling and mobile phones do not come up on that as yet. So the technology has not advanced at this point for that kind of work.

Senator PARRY—What about the volume? How big is your sample when you do this random telephone canvassing?

Dr Makkai—It will vary according to the survey that we are doing. For example, the last crime victim survey that we did was a sample of 6,000, which is the largest we had done. It is still a small sample, though, and the reason is that you are asking about being a victim of some crimes which are very rare. For example, being a victim of sexual assault is actually a rare occurrence—a terrible crime but a rare occurrence—so you get very small sample sizes in a sample of 6,000. The numbers get very small. In its survey the ABS has sample sizes upwards from 20,000 to 40,000, depending on the survey it does. We want to do a survey of about 20,000 businesses; however we suspect that our response rate will not be huge. Out of that we are hoping to get about 6,000 based on the results of the pilot survey that we have done. That is one way.

The police detainee survey that I talked about involves us going into police stations. During the period that we are in a police station we approach anybody there and ask them whether they will do an interview with us. So it is not a sample in that sense; it is anybody who comes in. Between 85 to 90 per cent agree to do the interview. Of those, around 75 to 85 per cent agree to give a urine sample. The reason I give those variations is that it varies across sites. For example, we get a lower response rate for providing us with a urine sample in the Sydney sites than we do in the Brisbane sites, so it varies. Those response rates are very good. That is one way we do it.

The other method that we use is simply opportunistic where we may do an online survey and ask people to log on and to respond to that survey. That is not a random sample. We have been doing one of those on consumer fraud and about 700-odd people responded.

Senator PARRY—How do you advertise that?

Dr Makkai—We advertise that through the website. The website gets about 30,000 pages downloaded a day. It is a very popular website and it is used extensively throughout the region.

We get a lot of delegations who say they use it because criminology is not as well developed in the region so they look to our website for information. Also, with that, we promoted that survey when consumer fraud awareness week was on. We advertised, for example, in the press releases that went out from the minister. They referred to the survey and so on. But it is not a random sample at the end of the day. They are different ways.

We also access data from police records, called administrative data. That is based on what the police record in their systems. That of course is dependent on who comes forward and reports a crime in those. They also have their own limitations. Then we also draw on courts data and prison census data.

Senator PARRY—That was a very comprehensive answer. I was curious as to where you got your information from so that is very good.

CHAIR—You could do a survey of this committee for banking fraud and you would get a 50 per cent response.

Senator PARRY—It could be higher.

CHAIR—It could be.

Senator PARRY—You mentioned ‘cleaning data’. I will not challenge you about the need for police jurisdictions to have clean data—to use your terminology—for evidentiary purposes. What do you physically do when you clean data?

Dr Makkai—We do a variety of things. Let me talk about homicide monitoring because, in a way, it is the best. We will get information provided to us from all the homicide squads. We will then look at that information and cross-check it, for example.

Senator PARRY—The information would be statements, forensic reports, crime scene reports?

Dr Makkai—We would not receive information as detailed as that, because we only ask for about 90 what are called variables—which are probably questions, I guess. They provide us with information on the 90 questions that we are asking. We then cross-check, for example, media reports. The police may in their system record something as a particular outcome, say, an assault. Then it may transform that the person dies and it becomes a homicide investigation. Maybe the administrative file that they provide to us has not yet been updated, but it gets reported in the newspapers.

Senator PARRY—So you are reliant on the media to help you ‘clean’? That is a unique concept.

Dr Makkai—Sometimes. We also check, for example, all the records against the National Coroners Information System, which is held in Melbourne. We go online; we have online access to that. We cross-check certain pieces of information. We will also look at the data. We will say, ‘It looks funny.’ It is as simple as that. We will look at it and we will say, ‘We’ve got a murder

victim who is 105 years of age,' and we will say, 'We don't think that's possible.' There has been an error in the data entry system. So, in a sense, we look for outliers in terms of quality.

Senator PARRY—So your cleaning is not of the evidentiary material?

Dr Makkai—No.

Senator PARRY—Your cleaning is simply of police records at the time or of the field which has been entered into your survey—what did you call them?

Dr Makkai—The variables.

Senator PARRY—Mr McCusker, on page 3 of your report entitled *Trends & Issues in Crime and Criminal Justice*, No. 308—which I think has been provided in evidence to us—under the heading 'Corruption,' it refers to Asian countries. How high up is that corruption; at what level? Are we talking at very senior policing levels, agency levels, or are we talking about officers in the field who are being paid to ignore or protect?

Mr McCusker—As far as I can recall, it was at senior ranks and in the field, particularly those officers who were in remote locations. I am happy to check that for you. But, to the best of my recollection, it went across the board.

Senator PARRY—Does the AIC monitor corruption activity in Australia?

Mr McCusker—No.

Senator PARRY—Do you see a need to do this?

Mr McCusker—We were asked by AGD to carry out a review of anticorruption strategies in the Asia-Pacific region. We did that by looking at what strategies did and did not work in combating corruption. I am happy to provide that paper to the committee.

Dr Makkai—We do not have a role in monitoring corruption.

Senator PARRY—Not even from a research perspective?

Dr Makkai—We have not been asked to do any research on it in Australia. The only thing we have been asked to undertake is this review, which AGD asked us to do trying, in a sense, to identify best practice in how to deal with corruption and how to inform their own policy development of programs in the region.

Senator PARRY—What would trigger research into that area? Would it be by ministerial direction or by your own initiative?

Dr Makkai—It could be by a variety of ways. The minister can request. The board of management can also direct us to do research in a particular area. We can put up to the board requests to undertake areas of research. We could also propose to the board that we would like to do research on a particular topic. There is a variety of means as to how research gets on the

agenda. It is very flexible in that sense because we are not tied in perhaps the same way as some of the other agencies with the same kinds of strict reporting requirements to the board of management.

Senator PARRY—Thankfully, it appears anecdotally and, hopefully, evidentiary-wise that there is very little corruption in Australia, which is good. ‘Super-empowered criminals’ is a phrase used on page 2 of the submission. Is this activity prevalent in Australia or is it more an international scene?

Mr McCusker—The term was identified in two reports by McAfee—one for North America and one for Europe—so I could not say authoritatively whether it occurs in Australia. I was talking earlier to a colleague about the distinction between traditional organised crime and organised crime. This is of the latter variety, where people exist online purely to supply the botnets or documentation, which can then be used by other people in physical or virtual worlds.

Senator PARRY—I think the example is the 1.7 million credit card numbers that were stolen and on sold.

Mr McCusker—Recently, at an eBay forum we had a presentation from a gentleman, a Russian speaker, who, through a circuitous route found publicly available websites in Russia, obviously in Russian, advertising criminal services to the extent where they were saying, ‘Buy two botnets and get one free. If you are not satisfied with your denial-of-service attack within a week, you get your money back.’ It was perfectly blatant and open. That is not a major issue, because the organised crime situation in Russia and more broadly in the former Soviet Union is so vast that that sort of thing is barely going to flicker on the radar. But that is the sort of level we are talking about. They are not organised criminals on those Russian websites; they are super-empowered criminals. It is a jargonistic term probably created by the people who are doing the dirty dealing rather than law enforcement, which is why law enforcement call it high-tech crime and not cybercrime, because it goes into the land of hyperbole, if you choose the cyber route.

CHAIR—I guess it is a bit of crystal ball gazing but new criminal activity in Australia in the next five to 10 years would have to be related to the internet? Do you have any feel from overseas experience or from clever thinkers on just where it is going to end up—perhaps some aspects of crime that are not yet in practice? Are those the sorts of things you might have looked at, anyway?

Mr McCusker—I think it is just this classic conundrum again—I hate to keep referring to it, but it is something that needs to be solved—which is traditional organised crime groups moving into cyber territory or just your routine person who happens to be organised online. If traditional organised crime groups elect to get involved wholesale in this, then what could happen—not necessarily in Australia but in other countries around the world—is the parallel that we had with the development of Russian organised crime in the real world.

Prior to perestroika and glasnost in the eighties, organised crime groups in the former Soviet Union tended to focus on a crime that they could commit within their respective republic because they could not physically or legally move between territories. As soon as the walls came down, so to speak, all of these disparate groups, with all of their expertise, came into one

massive conundrum or collusion and that is why we started to see in America and Europe—and to a lesser extent in Australia—Russian organised crime involvement. So, if you think of it in those sorts of parallels, if the groups with the current skills and know-how elect to go full scale into that world, yes, there are potential areas there.

What the threat assessments from Europe and America cited in this report, which I have provided for you today, seem to indicate is that there may be an increasing use of computers to share information, to pass on documentation, to abstract personal details from people's bank accounts. But, by and large, they seem, on the basis of those reports, to be used primarily to commit real-world crime. Some of the exceptions to that are the introduction of chip and pin credit cards in Europe. That requires that you enter a pin number rather than a signature. What has happened is that we have had a massive increase in 'person not present' or 'card not present' fraud online.

One thing we can say about criminals is that, whether they engage online or off-line, they are incredibly reactive to law enforcement change, to policy change and to law enforcement activity. They are there for the long term to make money and they will think of some incredible ways of exploiting perfectly routine systems. To finish with the Russian parallel, when the Russian organised criminals went to the United States to establish themselves, they recognised that if they started to tread on the territory of established organised crime groups (a) they would be in trouble with those groups and cause some friction and (b) law enforcement would be wise to them. So they started to do really odd things such as exploiting the difference in tax charges on fuel between states. They called it 'daisy chain'—setting up false garages to receive this fuel which they never received. It was never on the radar because it was not being anticipated.

Similarly, in terms of money laundering, we are seeing a lot of focus on wire transfers, on the use of computers to move money around the world. The Colombian drug traffickers have got wise to the fact we are getting wise to the use of computers. They have started to shift money in container loads of cash, because no-one is looking for money anymore. This is a perfect example of the reactive and proactive nature of those criminals.

I think your observation is perfectly correct: if the use of the computer goes the way it seems to be going then certainly we have some evidentiary difficulties coming up in prosecuting those cases, seizing data and policing the issues. But, even if computers died tomorrow, the criminality would not stop because there are just too many real-world opportunities out there.

CHAIR—You raise another issue which I have raised in other hearings we have had—that is, in things that are so complex or technical, or even in business arrangements these days, it seems to me, with some small experience in this, that juries would find it increasingly difficult to be satisfied beyond reasonable doubt of what is happening in many cases. Have you as an institute considered whether the beyond reasonable doubt standard of proof is the right standard in this day and age?

Dr Makkai—We have not looked at it in terms of organised crime. What we have done is work on sexual assault cases, because they are notoriously very difficult to get convictions on. We did a really interesting piece of research where we used mock trials. We had juries of citizens who came in and observed a mock trial of a sexual assault case and then we looked at what the verdict would be, based on the evidence they saw. We did not get a single conviction. We then

talked to those people—they were ordinary citizens recruited from around the Canberra and Queanbeyan area—about why not. One of the real difficulties was precisely what you are talking about. They did not feel, based on the evidence that was given, that they could convict beyond reasonable doubt. I think this is a real problem because you are overlaying that kind of thing with the problem of really technical information, very scientific information and whether juries have the capacity to cope with that.

CHAIR—Sexual assault or sexual matters have always been difficult and, as a former lawyer, they were the easiest to get off because you could raise reasonable doubt all the time. But I am talking more about things becoming so much more complex technically. I do know how to use my palm pilot but, if I had to convict on how that worked and how my internet happens to come down there and where the theft took place somewhere up there, I would not have a clue; I have never had any experience. I would imagine that juries tend to be selected from lower socioeconomic groups. That is perhaps an unfair generalisation, but that seems to be the case. Again, that sort of technicality is one thing but, going to very complex company or corporate structures, futures dealings and all those sorts of things, as much as I try, I cannot quite grasp them, and I suspect there would be others in the community less able than me to do it. It just seems that those sorts of things would make it very difficult for the enforcement agencies to get convictions in very complex—

Mr McCusker—I can perhaps make a couple of observations on this point because it has been raised before in discussions I had in the UK with various people. The first issue is about the lower socioeconomic groups. I accept that overview of jury selection. One thing in our favour, of course, is that, not necessarily in that group but in the younger generation generally—it is my birthday today, so I am feeling part of the older generation—

CHAIR—Happy birthday.

Mr McCusker—Thank you very much indeed. I will not let you guess my age because I could go home crying; the grey hair is natural. One of the things about the younger generation is that they are very technologically savvy in their own personal lives. Some of the phones are like space shuttle launchers, as far as I am concerned. Mine just makes telephone calls and that is it, but some of the phones are now incredibly complex and they are very adept at using them; equally in the use of computers in schools and the home—the broadband rollout et cetera. So, in terms of understanding a computer and what it can do and store, I think that is one hurdle that we can get over. In these sorts of trials there will always be, I think, the OJ Simpson effect, which is where one suspects that he got off in the murder trial because the jury were bamboozled by cleverly presented DNA evidence. The jury probably just went to sleep and said, ‘Well, he’s a good guy; I saw him in a film once’—that sort of attitude. We also have a parallel. You talk about the companies type situation, but we have always had a problem with complex fraud trials around the world. We do not have special juries for those—juries are simply there for a long time—and that has a mixture of effects upon whether trials are effective or not. But we do not stop prosecuting fraud because there are dangers.

CHAIR—But my question is: should we be looking at the standard of beyond reasonable doubt that evolved in the 17th century, when it was about: ‘Did he steal my sheep or didn’t he steal my sheep?’ Have you considered whether we should be looking at perhaps a different standard for some—I do not know how you would classify it—

Dr Makkai—We have not done any research on it, but there is a research project going on at, I think, the University of Canberra. If you like, I could try to find out some more details and get back to the committee on it. I think other people are looking at the issue because it has been raised. Particularly, I think it has been raised in terms of the very serious fraud cases, which are very complex and go on for a long time, where there are different companies, transactions and so on. Trying to explain that to juries is quite difficult. I could come back to the committee on that.

CHAIR—There was a case I was vicariously involved in of trying to place where a fishing boat was in the Southern Ocean, miles from anywhere. As I understand it, the evidence had to be calculations and various different forms of calculus or something like that—I did not sit through the trial. But they are difficult things for most people to grasp. If you then add to that, not only do you have to grasp it and try to understand it but also you have to be satisfied beyond reasonable doubt that it was there on that day. It just seems to me—perhaps I should not be giving evidence here—that one wonders whether that old standard of proof is still appropriate. Sure, it might be where your liberty and life is involved, but one wonders. I thought that, as an institute, it might be something that you might—

Mr McCusker—As Dr Makkai has said, we have not done any research on that and I do not think we currently intend to do so. I think the alternative—we are talking about getting rid of that burden of proof—would be the balance of probabilities. The danger with that perhaps in the high-tech crime world is that there is a fairly cogent defence being mounted by a number of defendants in the States, the Trojan defence, where they claim that the material found on their computers was planted by someone getting into their computer and nothing to do with them. So, if you had the lowest burden of proof in that situation, I suppose there might be some difficulties.

CHAIR—It again sounds like a convenient excuse.

Mr McCusker—Of course, but that is what defence lawyers do.

Dr Makkai—Also I think there has been a bit of a move away from having trials with juries and having only a judge or a panel of judges deciding. So there is a bit of movement in that direction.

CHAIR—In criminal cases?

Dr Makkai—I am not sure. I would need to check and get back to you, but I thought there had been some movement in that direction in some Australian jurisdictions.

CHAIR—There was always a thing at law where you were asked whether you would rather be tried by a judge or a jury. If you were guilty you would choose to be tried by a jury and if you were innocent you would choose to be tried by a judge.

Dr Makkai—That may be what I am thinking of.

CHAIR—Thank you very much for your attendance and for the information you have given to the committee. It has been very much appreciated. All the best with your future work. I cannot guarantee that every member of the committee will read every word of that report.

Senator PARRY—I can guarantee that they will not.

[4.05 pm]

BUCKPITT, Mr Jeffrey Ronald, Acting National Director, Intelligence and Targeting Division, Australian Customs Service

GRANT, Ms Marion Estelle, Acting Deputy Chief Executive Officer, Border Enforcement, Australian Customs Service

HURRELL, Mr Brian Geoffrey, Acting National Director, Enforcement and Investigations Division, Australian Customs Service

CHAIR—Welcome. Ms Grant and Mr Buckpitt, it is nice to see you, and it is good to see my old mate Brian Hurrell back, who may have understood my last question to the previous witness about the location of vessels. Thank you very much for coming along and for your submission, which the committee has accepted. Would you like to make an opening statement to your submission, or do you just want to subject yourself to the questions of the committee?

Ms Grant—We do have an opening statement. I would like to thank the committee for giving Customs the opportunity to appear and give evidence at this hearing. Customs is an organisation that engages in a wide variety of different regulatory and law enforcement roles. Its engagement with industry in cargo and passenger movement across the Australian border, its intelligence-driven interdiction and investigation activities and its participation as part of the law enforcement community engaging Commonwealth, state and territory agencies gives it a unique perspective. Often Customs is not the only source of information for other agencies, but it is specially placed to identify persons of interest and transactions of interest. Working closely with agencies such as the Australian Federal Police and the Australian Crime Commission is therefore of crucial importance to Customs.

We have an ongoing commitment, wherever possible, to provide the Australian Crime Commission with technical and other forms of support including analytical facilities, assistance with technological examinations such as airport surveillance, use of our X-ray facilities, ion scans for cargo examinations and so on. We value our ongoing engagement with the Australian Crime Commission. Apart from regular national and regional contact to exchange strategic and operational intelligence, there are appointed liaison officers and cooperation with joint investigation and intelligence activities. This interaction provides opportunities for Customs to contribute to the strategic assessments of the ACC and to benefit from the perspectives of the commission.

These assessments are a valuable resource to Customs in understanding broader organised criminal activity in developing responsiveness to emerging issues and to assist in defining our border targeting objectives. Through intelligence sharing and analysis, Customs seeks to anticipate threats from serious and organised crime at the Australian border or even before these threats arrive on our shores. The role of Customs in the interdiction and investigation of the importation or exportation of chemical precursors for the domestic manufacture of narcotics is well known to the committee and also through your earlier inquiry into the manufacture, importation and use of amphetamines and other synthetic drugs into Australia.

Customs' investigation of serious offences involving not only precursors but also many other goods is dependent upon effective intelligence and planning. In this regard, I would like to provide an example of the current work between the two agencies. The Australian Crime Commission, Customs and also our colleagues the Australian Federal Police have established what we are calling a joint target generation team. The team involves an analyst from Customs and the Australian Crime Commission working to identify individuals and companies that will be the subject of separate operational activity. This work involves marrying up intelligence and data holdings of the two agencies. It is currently generating details about a number of targets that we suspect may be illegally importing precursors. It is this type of partnership approach that we believe will deliver significant results over the coming years.

The Australian Crime Commission certainly appreciates that Customs' interests at the Australian border are affected by a variety of domestic and international influences. They also understand that, apart from Customs' regulatory capabilities, its intelligence collection, analysis and strategic planning, together with its investigation tools and capabilities, are essential ingredients to safeguarding the Australian community. A failure in the border control environment, intelligence collection or the investigation capabilities of Customs could have a serious impact on our society in the short and long term. Customs therefore welcomes this review by the committee and the opportunity to provide information and to assist you.

Senator PARRY—Do you monitor worldwide activity for future trends in organised crime in relation to your activity in Customs?

Ms Grant—I will ask Mr Buckpitt to comment about our strategic intelligence function, which he is responsible for.

Mr Buckpitt—We do to a limited extent. In particular, we receive reports from agencies overseas as to major detections and from time to time they provide us with strategic intelligence assessments that are of some interest or value to us; but it is not a major focus of our research and analysis effort.

Senator PARRY—So you do not have, for example, indications that cocaine is smuggled in the handlebars of motorcycles and that that is the flavour of the month this month? Do you get alerts down to that detail?

Mr Buckpitt—We do receive information about those types of concealments. The difficulty though is that you would not really say that any particular approach is a flavour of the month because the variety and diversity of the concealments that we see are too great to indicate that one particular method of concealment is more common than another. It might be the case that we will see a series of particular types of concealments, but then we will not see it again for a long time.

Senator PARRY—Do you then inform equivalent agencies world wide of what you are experiencing in Australia?

Mr Buckpitt—Yes, we do.

Ms Grant—I want to amplify there that we are part of a Customs network and we do share those methods of concealment as we encounter them. We find that you might have a run of that particular method in different countries at about the same time, but, once we have shared that information with other countries, that method stops and a different one takes its place. But those networks do exist to share that operational level of information about methods of concealment.

Senator PARRY—So it is about early and rapid dissemination of that information from whichever agency detects a trend or new trends?

Ms Grant—That is correct.

Senator PARRY—I am assuming—correct me if I am wrong—that we will never achieve 100 per cent screening of all incoming goods into this country through every port. It would be great if I were wrong, but I would assume that. So the reliance on intelligence must be great. Do you feel as though you have effective networks within the country as well as external networks for this intelligence gathering?

Mr Buckpitt—We do what we call profile or electronic screening of all consignments that are reported to us. In the physical sense though, which I suspect is what you meant, it would be an enormous undertaking to physically screen all cargo and I am not aware that any modern country attempts to do that. Even if we were able to do that, the question would be about how much effort you apply to that cargo because, as you pointed out, the methods of concealment are becoming so sophisticated that in some cases it takes quite a detailed examination of any particular piece of cargo to determine whether or not it has compartments or some means of concealing drugs.

Senator PARRY—Do you see on the horizon, looking at future combatants, if you like, any technology that will speed up that process—for example, advanced screening devices that can actually penetrate deeper and further through containers as they come through?

Ms Grant—At this particular time, we are not aware of any particular technology that would act in the way you have described it. I have a research and development branch as part of the border enforcement program in Customs that is charged with monitoring developments in technology around the world to see what is out there that is happening from a detection point of view. We consider that at this point we have the state-of-the-art technology that is currently available for operational deployment.

Senator PARRY—You have just answered my next two questions; very good. Moving onto an internal perspective, how do you manage the potential internal corruption issues and do you see this as a future threat or a managed threat that you have today?

Ms Grant—Customs operates under the Public Service Code of Conduct. We also have a fraud control plan. We have fraud awareness packages and integrity packages, but we manage that higher level of internal corruption through what we call our internal affairs program. That is an independent investigation area of Customs where any allegation of wrongdoing made against an officer is investigated by that particular part of Customs. It is akin to what you might more commonly recognise as professional standards in police services.

Senator PARRY—So that is complaint activated. What about initiatives within Customs such as random checks of personnel—does anything of that nature happen?

Mr Buckpitt—Our recruitment process is very much a part of this in that any officer must be cleared to a certain standard. That involves a detailed background check of not only police records but also associations and the like. The clearances within Customs, similar to other law enforcement agencies, depend upon the nature of their involvement with sensitive information. The first point is really just getting into the organisation. There is a detailed framework for ensuring that the officers recruited meet the high standards in the sorts of integrity concerns that you are obviously raising with us.

Senator PARRY—Would I be correct in assuming that that is the greatest internal threat—personnel who would be susceptible to corruption?

Ms Grant—That is always a threat for any agency involved in law enforcement. To mitigate against that threat, we have quite a strong mobility policy within Customs whereby people are not left in the same job for many years. For lower levels it might be 12 to 18 months in one position and then they have a move to a new position. At slightly higher levels, it varies; it goes up to, say, three to five years in a position. That movement reduces the opportunity to develop corrupt relationships and benefit from them. As Mr Buckpitt has indicated, the security clearance process is quite rigorous. We have a minimum of ‘protected’ for all employees in Customs. If you need a higher level clearance during the course of your career, you will be vetted again. But, to answer an earlier question, there is no random process of investigating individuals to ensure a corrupt-free status.

Senator PARRY—So there needs to be a purpose before you would undertake an internal investigation. If I were running an organised crime syndicate and I wanted to bring a dozen containers into any particular wharf in Australia with illegal products or produce, how many officials would I need to contact to enable me to do that? If there was a strong chance of those containers being inspected, either randomly or routinely, how many officials would I need to make contact with and to bribe, if you like, to enable that to occur?

Mr Hurrell—I might attempt to answer that. I am not sure that I can give you an exact number.

Senator PARRY—Even the range of occupations.

Mr Hurrell—It is certainly not a single person; I can say that. I think our electronic systems are set up with sufficient checks and counterbalances to make sure that an individual or, indeed, two or three individuals could not conspire to override those systems to the extent that you are suggesting. I think it would have to be a concerted effort. Where those sorts of things you are referring to have occurred in the past, it has generally been in the area of one or two officers who, shall I say, were perhaps a little more naive than they were acting with malice aforethought in providing information about our systems. That is probably the biggest threat—information that is internal that gets into the hands of organised crime which allows them to manipulate the whole of the system, not just the Customs part of it, in a way that it would facilitate an illegal importation. I would not want to go on the record and say what the precise number is, but it would certainly be—

Senator PARRY—A significant number.

Mr Hurrell—A significant number to override all those checks and balances, yes.

Senator PARRY—That gives the committee some comfort.

Senator MARK BISHOP—Why has legislation denied you access to getting these telephone interception warrants in your own right in the past? What has changed that warrants your now having the ability to access them in your own right?

Mr Hurrell—I will attempt to answer that one. I am not sure that we have been denied access to them. There was always an ability for Customs to be involved in joint activities and joint investigations.

Senator MARK BISHOP—In the context of a sole application.

Mr Hurrell—I think it was probably more a historical view that we were not necessarily investigating that higher end of criminal activity that warranted that sort of intrusion. I think times have changed. We are finding more and more that the sorts of investigations that Customs is getting involved in, either initially on its own as an agency or then later in company with other policing or law enforcement agencies, are tending towards the higher end of criminal activity. I will give you an example of that. We find that the same people who may be involved in substantial illegal tobacco importations will also be involved in activities involving narcotics or, indeed, is a precursor. We know that the same people are linked in all of those activities at a certain level of organised crime. That usually goes to some of the issues that Senator Parry was just talking about—the ability to facilitate the movement of illegal goods through the border by knowing how the system works and how they can break down those systems with the people who move goods and part of the Customs system as well.

I think that has changed significantly over the years. We are now finding that when we do warrant activity on, for example, people who have brought in a full container of illegal tobacco, those people will be well-known to policing agencies and they will be involved in much higher level criminal activities than somebody just smuggling something across the border. It is a much higher level of activity. Our submission is that, if we have access to that information in its raw state, we are much better placed to make an assessment of what that material means. We understand the balances between operational activity and privacy—always a consideration—but we do know from experience and working with the other agencies, including the Crime Commission, that there are specialist areas within law enforcement, as you would understand, and a Customs officer might interpret raw product from interception in a different way, knowing how the import-export system works, to what a police officer or an intelligence analyst from another agency. At the moment, we are restricted to what they draw from that raw product and provide us with in an information report.

Senator MARK BISHOP—So they provide you with an information report. Do you have the right to request the raw information once the other agency has lawfully obtained it?

Mr Hurrell—No, we do not. We cannot do that unless we are mentioned in the initial warrant as part of the joint activity. If we go into an operation as a partner and we are mentioned on the warrant that allows the interception. We can then have access to all of the material.

Senator MARK BISHOP—So you are essentially seeking the ability to apply for warrants for TIs in your own right to enable you to get access to the raw data and interpret it within your own organisation?

Mr Hurrell—That is correct, yes.

Senator MARK BISHOP—You suggest that because of (1) your own internal expertise and (2) higher levels of criminal activity. With the other agencies which you have used as partners in the past—state police forces, AFP and the Crime Commission—has there been any lack of cooperation or assistance on the part of any of those agencies in the application stage for TIs?

Mr Hurrell—No, I would not say there has been a lack of assistance. They are constrained by the law, obviously. Once the warrant has been obtained, if we are not on the warrant, that is a constraint under the law. Also, they have their own priorities. What might be a priority for Customs in investigating a couple of containers of tobacco would not be high on the list perhaps for the Australian Federal Police, given their much broader remit in terms of law enforcement. They, with their resourcing, may simply not be able to assist us at that time. It is not a lack of willingness on their part.

Mr Buckpitt—Just on the issue of priority, sometimes it might be a priority for them in the overall sense but, because they might have an operation of their own on in a particular part of the country, they might require us to wait three or four days before they can get to that and that three or four days might be critical to us.

Senator MARK BISHOP—You say that you have had preliminary discussions with the A-G's department on the issues involved. Is the A-G's the lead agency here?

Mr Hurrell—Yes, they are.

Senator MARK BISHOP—So they need to be persuaded of the merit of your case?

Mr Hurrell—Yes, they do.

Senator MARK BISHOP—Where are those negotiations at?

Mr Hurrell—At this stage of the negotiations, we are proposing to put some legislative amendments forward. It is early days yet, but we have had agreement in broad principle with the A-G's department that we should take this forward. They are still very early discussions.

Senator MARK BISHOP—So there is broad agreement in principle and it is early days for the discussions with the A-G. Is it a decision of the two departments in negotiation or is the eventual decision a policy call for either of the ministers or for cabinet?

Mr Hurrell—I think it is a call for the minister.

Senator MARK BISHOP—So it would have to be flicked up to Senator Johnston and his counterpart in A-G in due course—is that correct?

Mr Hurrell—Yes.

Ms Grant—It would just follow the normal legislative amendment process of all of those policy approvals through ministers and—

Senator MARK BISHOP—I will rephrase the question. Has the policy call been made by the two ministers to support the extension of the TI proposal, as you suggest, to Customs, or is that still under review by the two ministers?

Ms Grant—It is much earlier days than putting a proposal to get formal policy approval from ministers at this stage.

Senator MARK BISHOP—So we are still in very early days then departmentally.

Ms Grant—Yes.

CHAIR—One of the witnesses who gave evidence to the inquiry in Sydney suggested that there seemed, with cross-border crime, to be a change in the point of origin and the point of entry into Australia for illegal goods on the basis that perhaps Sydney Airport or Sydney ports were now becoming overly sophisticated and, therefore, the crooks were trying to find less protected areas for entry into Australia. Does that accord with your assessments?

Ms Grant—The pattern of the drug seizures that Customs has been involved in—if we talk just the last 12 months, which is very similar to previous years—our drug seizures do not support that contention. Sydney is still the place of highest activity.

CHAIR—Both their air and sea ports?

Ms Grant—Seizures in airports can occur around Australia because we have different aircraft movement patterns. Certain flights originating in other countries can have their first port of call in Australia in Perth or Brisbane. It is more spread out, so we do get a range of seizures at all of our airports. But in the cargo environment, Sydney is still the port where we see the most detection activity.

Mr Hurrell—It might be worth noting that Sydney, for example, gets 70 per cent of the air cargo that comes into Australia, so one would anticipate on the air cargo side that would be significant. In sea cargo terms, there is not a huge difference between Sydney and Melbourne. Melbourne gets more containers and the type of cargo differs slightly. But in previous operational activity over quite a number of years we have certainly detected a trend of movement of illegal goods from the eastern seaboard, if you like, to other parts of Australia, where we work with our colleagues in the state police. That has been a trend that has been noticeable and we do not have any evidence that that has changed.

I think one other telling point is that the organised criminal elements within Australia that I was alluding to earlier in terms of facilitating the illegal movement across the border are often

found to have contacts. The principal might be in Melbourne, but the importation will occur in Sydney. That has certainly been established over a number of law enforcement operations over the years.

CHAIR—Ms Grant said that the detection activity in Sydney is still the highest, but are the detection results the highest?

Mr Hurrell—Yes.

Ms Grant—Mr Buckpitt might like to give you some figures.

Mr Buckpitt—I do not have statistics that would be able to show you the proportion of weight detected by capital city, but if you look over the last year or two the bulk of our detections continue to be in Sydney. But you would not go to the other extreme and suggest that therefore we should focus our activity on Sydney, because it is also true that there have been some substantial detection in other capital cities. When you look at these detections and who is involved with the arrests, particularly with the larger detections, you find that they are national networks and not just one or two individuals based in the capital city. So it really does require a national view of what is happening.

But to come back to your fundamental question, the largest proportion of our detections is in Sydney. In part, that is because of the sheer volume in relation to air cargo. As Mr Hurrell has indicated, I think of the order of two-thirds or 70 per cent of air cargo comes into Sydney. But even with sea cargo, we continue to get more detections in Sydney than in any other port.

CHAIR—Is that perhaps because your activities there are more significant than in other places?

Mr Buckpitt—No, I do not think so. If you look at the number of containers that Customs examines, I have not done a comparison, but I do not think the numbers are substantially different between Sydney and Melbourne at all. Yet the detections in sea cargo in Sydney are substantially more than they have been in Melbourne over a substantial period of time.

CHAIR—So in lesser ports like Brisbane or, say, even Townsville or some of the iron ore ports, you have not seen any increase in attempts to enter Australia—through the non-Sydney or non-Melbourne ports?

Ms Grant—No, we have not seen that trend. When we introduced container examination facilities, that was our first thought. We thought: ‘Well, once we have a container examination facility in this port, people will try to move their cargo to ports where we do not have that facility.’ We were trying to do some baseline figures to see whether there was that actual movement in cargo arrivals. We now have the container examination facilities in Sydney, Melbourne, Fremantle, Brisbane and smaller facilities without the container X-ray equipment in Adelaide and Darwin. So the capital cities where containerised cargo arrives all have good examination capabilities and we put in—

CHAIR—Wouldn’t that be a signal to me as a criminal importer to say, ‘Well, look, I’m going to send mine through Townsville, because I know they do not have X-ray facilities there’?

Ms Grant—We monitor for that. As Mr Buckpitt said, all electronic cargo reports are risk assessed by Customs. So we would detect quite readily an upsurge in activity, say, in a port like Townsville, which does not get a huge amount of containerised traffic. We risk assess all cargo coming into those ports and, whilst we might not have the X-ray capabilities, we have the old-fashioned physical examination capability. So we will pick the containers for examination in places like Townsville and do a full examination. We do not believe those ports are exposed and, in a sense, because the volumes going into them are relatively small, any trends emerge faster than a downward trend in, say, Sydney or Melbourne would show up.

Mr Hurrell—I certainly think we could add to that by noting that, in many cases, the criminal syndicates are opportunistic as well as planning to come into a particular point. If we move beyond cargo to the shipping environment, we had an operation which is still subject to court action by the AFP where the vessel that the narcotics were on moved out of South America across the Tasman and went to three Australian ports before they made an attempt to take the goods off. On each occasion the members of the syndicate were present in those other ports. They could have attempted to take it off in Brisbane, Sydney, Melbourne or Fremantle. They chose to attempt it in Fremantle. So they are opportunistic and they plan.

CHAIR—But are they making an assessment on the basis of where the heightened activity is?

Mr Hurrell—Not necessarily. They are very cautious, not surprisingly. They make an assessment on what the best environment is for them to operate in. In this case it involved diving on the hull of the vessel. We made an assessment that it was likely to come off in Sydney because that is where they were based. They assessed that, because the vessel went into a different berth in Sydney to where it normally went, that would not provide them with the same opportunity for access. So they were then prepared to track it until it got to its final port of destination. So there are those sorts of trends.

CHAIR—With amphetamines—I imagine you can move a big quantity in a little space—in the future, will it become easier in criminals' minds to fly from PNG or Indonesia into remote airstrips in the north of Australia? That is the old postwar time scenario. Is that something you are conscious of, or don't you have any concern about that?

Mr Hurrell—We have concerns about it; we do not have any hard intelligence that that is happening. Certainly, on the north-east of Australia, that is a possibility with small aircraft and we are always alert to that concern. I think a number of things have to line up for them to take that level of risk, which we have not seen in recent times. Certainly many years ago there were attempts to do just what you are suggesting.

In addition to that, there is the issue of small craft particularly coming to the eastern coast of Australia, particularly, say, north of Sydney. That is certainly a concern of ours. Small craft importations into Australia generally have been attempted into that part of the east coast and parts of the west coast of Australia. But, on the aircraft question, I do not know whether Mr Buckpitt has any up-to-date intelligence. I do not think we do.

Mr Buckpitt—We are not aware of any intelligence that that is a method that is of any greater usage to the criminals now than it ever has been. We are concerned that it is a possible vulnerability. But, even so, that method of operation has separate risks, because it is so unusual

for an aeroplane to come into a remote airstrip. That draws attention to itself in a way that one more box of goods amidst one million or so coming into the country does not. So criminals have to weigh up those types of risks. We are seeing far more commonly the attempt to disguise something as just one more of the many hundreds of thousands that we see each month.

Ms Grant—We have our active Customs hotline community participation program in those remote communities as well. We actually receive phone calls from people on stations. They say, ‘We’ve seen lights, heard a noise and we think someone has used our airstrip.’ We do go and investigate such reports, but to date none have turned into any smuggling effort.

CHAIR—I think I raised this with Mr Hurrell in other circumstances, but you are not concerned about goods coming down over land and over sea from New Guinea through the Torres Strait. That is not a big worry?

Mr Hurrell—One of the big benefits we have in Torres Strait is that the island communities are very quick to report any activity on their patch and they do that very well. We have some officers stationed on a handful of islands, but there is a much wider community awareness out there. If anybody turns up there that they feel should not be there they will very quickly alert the authorities in some way.

Building on what Ms Grant said, the remote communities react to this sort of stuff much quicker than in urban areas. We find we get very good cooperation from those communities. Indigenous communities as well will quickly make any unusual circumstance known, either to police or Customs or ring the hotline or something like that. They do it with a range of activities and it gets reacted to fairly quickly.

CHAIR—Is your biggest risk with sea importation or is it with Sydney and Melbourne airports or capital city airports? What is the greatest concern to you?

Mr Buckpitt—Typically sea cargo is the vehicle by which the largest quantities are detected. That has been the case over many years and therefore it would be regarded, I suppose, as the largest risk, followed by air cargo, passengers and post. If you look at numbers of detections, it is areas such as post where we get the largest numbers of detections. But, given the nature of postal items, they tend to be quite small quantities and collectively are not the same sort of risk that you get when it is a sea cargo item such as a container that might be quite a large quantity.

Ms Grant—Not to forget vessels; we had the detection where almost a tonne of cocaine was brought ashore from a vessel off the coast of Western Australia. Any approach—ships, aircraft, people, goods—are risks to us and it is very difficult to prioritise them as to what is the vulnerability because the method of concealment, the method of importation, will change in response to where the criminals see our weakest point.

CHAIR—What percentage of detections you have made at sea ports would suggest that there is complicity on the wharves from the stevedores or the transport operators?

Ms Grant—I do not have a percentage that I can give you now.

CHAIR—Is it big or little? I am not asking for how many you actually convict or arrest, but do the methods of entry suggest that there has to be some complicity at the point of disembarkation?

Ms Grant—We have cases where the people within the logistics chain outside of government agencies—so people in stevedoring companies, people in brokers' offices—have been involved as part of that importation network. At what percentage it is hard to say, but it is there.

CHAIR—Are there always convictions or is it that in many cases you know someone is complicit but you cannot actually put a finger on them?

Ms Grant—In the cases I am talking about, people have been identified and charged. With other cases you suspect that there is inside help, but they are the ones where your suspicions do not turn into evidence that you can then prosecute against.

CHAIR—That is what I suspected. Can you get on notice perhaps actual statistics or just a feel—whatever that means—for what you suspect or have proved is complicity at the point of disembarkation? Do you think you have those figures?

Ms Grant—I do not think we have the information in terms of just figures, but we have done quite a lot of work over the years in Customs on what we call internal conspiracy—that is about levels of involvement in criminal activity of people employed by legitimate companies in the logistics chain. We have quite a deal of intelligence assessments that have been written on that subject matter. We have then commenced operations to test those assumptions. So there is a volume of work around that. We could probably give you a bit of a story based on that work rather than just a numbers answer.

CHAIR—I am really interested in how much importation requires some, as I say, complicity to get through the borders, so to speak.

Mr Buckpitt—Can I just clarify your question? Are you interested in involvement of others on the land side, or is your question about circumstances where individuals have not been charged and arrested?

CHAIR—No. I just wonder when things do come through the borders—I am talking particularly about seaports, although it might be interesting considering the Schapelle Corby matter of whether the same sort of thing is happening at airports—if having someone inside working with the criminals as the containers come off is a common occurrence, whether a proven common occurrence or a suspected common occurrence.

Ms Grant—With the majority of detections we make, I would say they have not had inside help. But there are a number of cases where we believe containers may have been stolen off wharves and they are the ones where definitely they have had inside help to move a container off the wharf outside of the system run by the stevedore outside of controls placed by Customs. There are a lot of attempts to bring goods into the country where they are just using our system—lodging the appropriate documents, getting the approvals for the goods to move and I think just playing the odds that we will not detect their shipment and that it will just go through the normal process. Then there are the other ones where they are not going to take their chances

like that. They are going to line up the help they need to make sure that, even if Customs has an interest in their container, their container will have mysteriously vanished from the wharf before we get to it. I think it is that aspect you are interested in.

CHAIR—Or if people would know by observation that your Customs officers do three weeks on the left-hand side and then only two weeks on the right-hand side so, depending on which week it is, they might put the container there or there. It is that sort of conspiracy theory. You do not X-ray 100 per cent of containers, do you?

Ms Grant—We do not X-ray 100 per cent of containers; we risk assess the electronic cargo reports for 100 per cent of containers and make our selections from those electronic reports as to which containers we have an interest in and then those containers will go through the container examination facilities in the locations where such facilities exist or go direct for a physical exam in other locations.

CHAIR—Is this public information? I do not want you to give away any secrets here. Is it public on what percentage of containers you do?

Ms Grant—We do about 133,000 20-foot equivalent units per annum.

CHAIR—What is the percentage though?

Ms Grant—That percentage is a bit over six per cent.

CHAIR—Is it an expensive process? Why don't we do 100 per cent—let me put it that way?

Ms Grant—The 133,000 TEUs go through four container examination facilities around the country. Those facilities work various shifts. I think we are running—off the top of my head, I cannot remember the hours we operate—a 16-hour shift in Sydney. Why don't we do 100 per cent? The risk does not support X-raying every single container. But the volume of container examination facilities we would need in order to put every container through—I am just saying that 133,000 being just over six per cent in four facilities that we operate variously between 12 and 16 hours a day. I guess we could extrapolate that as to how many facilities we would need to do 100 per cent of containers and we would be certainly X-raying a lot of low-risk containers—known shippers, highly compliant companies that have a volume of containers, which we would just be impeding legitimate trade to by X-raying for no sort of risk.

CHAIR—I think part of this committee at one stage inspected one of your facilities, but I have not seen one—and perhaps this committee should do that sometime. But is it a difficult and expensive process? It is not just a matter of driving a truck through an X-ray machine with a container on the back.

Ms Grant—It is a process of driving a truck into the X-ray. The driver gets out of the truck, goes and stays in a safe room. The X-ray then runs over the vehicle. While that is happening, we have our image analysts sitting in their control room looking at that image. They need a period of time to analyse that image to determine whether there is anything in it that they want to then—

CHAIR—How long does that take, on average?

Ms Grant—That takes between 10 and 15 minutes to do the analysis of the image that is coming to them in real time. If they conclude that there is nothing of further interest in that container, they send the message back that the driver can jump back in the cabin of the truck and take it away, or else they will say, ‘Unload it.’

CHAIR—What I am really getting at is that you are doing 133,000 containers at half an hour each—is it?—whereas, if you had to do 200—

Ms Grant—Say 15 minutes. The way the logistics process works, let us say from the wharf through our facility, is that if we have no interest in the container, and back to the wharf, it is about a 45-minute trip as a representative container.

CHAIR—This is why it is not possible to do 100 per cent. That is what I am trying to understand.

Ms Grant—Yes, volume.

Mr Buckpitt—More labour intensive than the X-ray though is the work that is involved in the unpack of the container.

CHAIR—You unpack them, do you?

Mr Buckpitt—From time to time—in fact, we X-ray of the order of eight to 10 per cent of containers—we will go to the next step of unpacking because the analyst who is looking at the X-ray image cannot be certain from what he or she is seeing that this is all okay. That is when the next level will proceed. You can imagine the amount of physical labour that is required to unpack a container. It depends upon what it is; it can be very high. The facilities that we are talking about have quite a staff component to them. They are very large facilities and, if we were to go to 100 per cent examination, you would be looking at effectively doubling the size of the Australian Customs Service to handle the extra workload from that.

CHAIR—I appreciate what you say on risk assessment and I am sure that people who have had a lifetime’s experience in this rather than someone who has had 10 minutes experience in it would have been through these things, but six per cent does not seem high. I understand that you risk assess them before they get there, but you cannot always be right on your risk assessments.

Mr Buckpitt—That is true.

CHAIR—And the clever criminal will make sure that you are not right.

Mr Buckpitt—Yes, that is very true. We take the view though that we X-ray 100 per cent of the high-risk cargo. The question really is how much of the low-risk cargo that we do not X-ray is concealing drugs and other items that we would want to detect.

CHAIR—Do you randomly test some of the low-risk containers just to double-check or double guess your assessments?

Mr Buckpitt—We do. We do that for a couple of purposes. One is as a baseline to determine the effectiveness of our profiles in identifying which containers we think are the higher risk ones. So we do that with the order of about 30 to 40 per cent that go through.

CHAIR—Nothing you have done in that suggests that your methods are anything but the best that we can afford at the moment?

Mr Buckpitt—Yes.

Mr Hurrell—Certainly in international benchmarking terms, I think the six per cent would stack up against similar economies quite well; there is no question about that. We are up, in terms of a Customs administration physical screening level, with similar trading partners.

CHAIR—I would be the first to acknowledge that you and the AFP have had some magnificent successes in the past four or five years in interceptions, but the regrettable fact is that there is still a hell of a lot of drugs coming into Australia, and they have to be coming in somehow. If they are coming across the borders, we are missing them. I guess the AFP is all value for money. The cost to the country of drug taking is enormous. It is probably a matter for governments to determine what the finances are.

Ms Grant—That is why the intelligence collection and the agencies are working together to share that information intelligence and, as Mr Hurrell was saying earlier, sometimes another agency does not see the significance of the raw data of the interceptions, and we might not see the significance of that from a policing point of view. Sometimes the policing does not see it from the border incursion point of view. The Customs view is that, rather than trying to X-ray more of the physical product coming into the country, we should be boosting the intelligence gathering, that intelligence sharing, so that we can go to the high risk goods.

CHAIR—That is your business more than mine. You do a fabulous job. You get a hell of a lot of interceptions—great work between you and the AFP. But we are still seeing an increase in the importation of drugs. They have to be coming in somewhere. Perhaps in a perfect world we would X-ray 100 percent, but we do not live in a perfect world, obviously, or we would not have any of the drugs. They are perhaps questions for those who provide the money. Thank you very much for what you do. As I have said to the AFP, you do some very good work, some excellent work, on the interceptions that are coming across. From my limited knowledge of Customs operations around the world, you would be up there amongst the best of them, if not the best, so well done. Keep up the good work.

I formally close the hearings. We have the Attorney-General's Department back with us to give some in camera evidence. The general hearing is concluded.

Evidence was then taken in camera—

Committee adjourned at 5.10 pm