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JOINT COMMITTEE ON THE AUSTRALIAN CRIME
COMMISSION

Reference: Australian Crime Commission annual report 2006-07

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**JOINT STATUTORY
COMMITTEE ON AUSTRALIAN CRIME COMMISSION**

Wednesday, 9 April 2008

Members: Senator Hutchins (*Chair*), Mr Wood (*Deputy Chair*), Senators Barnett, Parry and Polley and Mr Champion, Mr Gibbons, Mr Hayes and Mr Pyne

Members in attendance: Senators Barnett and Parry and Mr Gibbons, Mr Hayes and Mr Hutchins

Terms of reference for the inquiry:

To inquire into and report on:

Australian Crime Commission annual report 2006-07

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Committee met at 1.35 pm

CHAIR (Senator Hutchins)—I declare open this public hearing of the Parliamentary Joint Committee on the Australian Crime Commission in its examination of the *Australian Crime Commission annual report 2006-07* as required under section 55(1)(c) of the Australian Crime Commission Act 2002. I remind all witnesses 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 the 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 a committee.

The committee prefers all evidence to be given in public, but under the Senate's resolutions witnesses have the right to request to be heard in private session. It is important that witnesses give the committee notice if they intend to ask to give evidence in camera. If a witness objects to answering a question, the witness should state the ground upon which the objection is taken, and the committee will determine whether it will insist on an answer having regard to the ground which is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request may, of course, also be made at any other time.

[1.36 pm]

BAILEY, Ms Jane, Executive Director, Organisational Services, Australian Crime Commission

KITSON, Mr Kevin, Executive Director, Strategic Outlook and Policy Division, Australian Crime Commission

MILROY, Mr Alastair, Chief Executive Officer, Australian Crime Commission

OUTRAM, Mr Michael, Executive Director, Programs Division, Australian Crime Commission

SOUTHCOTT, Mr Paul, Chief Financial Officer, Australian Crime Commission

CHAIR—I welcome representatives from the Australian Crime Commission. I invite you to make a short opening statement, at the conclusion of which I will invite members of the committee to ask questions.

Mr Milroy—In 2006-07 the Australian Crime Commission continued to make significant positive steps to achieve a more unified effort to fight nationally significant crime. The 2006-07 annual report is a reflection of the agency's success in delivering effective and actionable criminal intelligence services and in bringing a multidisciplinary, multijurisdictional focus to investigations into federally relevant criminal activity. Major enhancements to the Australian Criminal Intelligence Database—ACID—have significantly increased jurisdictional engagement with the system. All agency searches almost doubled from the previous year, 2005-06. ACID recorded a 75 per cent increase in searches, and over 22,000 more documents were uploaded by law enforcement nationally. There was also a 492 per cent increase in new identities created in the system from the previous year. Criminal information and intelligence shared through ACID's system arms law enforcement nationally with the means to combat and dismantle the activities of serious and organised crime.

The ACC has also continued its focus in the area of over-the-horizon estimate of intelligence, as it is a crucial component of the commission's intelligence function because it informs law enforcement decision making and priority setting nationally. In broad terms, some of the key issues featuring more strongly in the ACC's forward-looking work during the reporting period included the growing extent and impact of organised crime involvement in the fishing industry, infiltration of organised crime into the private security industry and associated industries, the potential for overlap or crossover between criminal and extremist organisations in Australia, indications of organised crime involvement in identity kits, the impact of technology developments in the telecommunications sector and emerging issues around the use of biometrics.

The menu of work undertaken by the commission is influenced by the changing nature of the criminal environment and the priorities determined by the Australian Crime Commission Board. To combat serious organised crime activity, the board during 2006-07 approved an intelligence

operation, special intelligence operations, special investigations and a task force to address a broad range of criminal activity. Underpinned by proactive criminal intelligence and the strategic use of coercive powers, the majority of the commission's operational activities were conducted in collaboration with the Commonwealth, state and territory police services and other government agencies. In excess of 80 per cent of all such work is carried out in partnership with a variety of agencies.

If it pleases the committee, I can now expand on some of the key activities and achievements during the period. The ACC made 2,452 operational intelligence disseminations. There were 104 strategic intelligence projects produced, which consist of strategic criminal intelligence assessments and national criminal threat assessments. We disrupted, in partnership, 25 serious organised crime entities, which included criminal networks, syndicates and groups, and disrupted the criminal activities of 26 significant individuals. We continued to progress investigations and prosecutions in Operation Wickenby, the investigation of significant tax avoidance. In relation to the same investigation, the ACC has been successful in over 20 legal cases challenging the validity of the ACC led investigation. The ACC conducted over 703 examinations and issued 604 production notices; restrained \$6.68 million in proceeds of crime, with \$6.44 million forfeited; issued tax assessments for \$5.5 million; and recouped \$0.49 million in tax recoveries. There were 86 drug seizures, with a total street value of \$1,562 million. A significant proportion of that was due to one major seizure of precursors, with a street value of \$1.5 billion. We seized and quarantined 323 firearms and components and charged 176 persons on 429 charges.

In addition, let me emphasise that the dissemination of ACC intelligence to our partners has been integral in them making numerous seizures of drugs, weapons and assets, and also identifying clandestine laboratories. Complex and protected operations and investigations with our law enforcement partners have produced, I believe, outstanding results, again reinforcing the effectiveness of the agency's intelligence and operations model, and I am confident that similar results will be realised in 2007-08.

Might I now touch, for the committee's information, on the key assets of the ACC: its staff. During the 2006-07 period, the ACC had 666 staff across eight offices—that figure includes staff seconded to the ACC from other agencies. In addition, of course, there were numerous agencies which provided their staff to assist the ACC in its joint work free of charge. Our emphasis on developing a highly skilled and dynamic workforce has been a significant contributor to the many successes the agency has achieved, and that work is continuing into the current financial year. Throughout the year we have devoted considerable resources and effort to building organisational capability, including staff training, workforce planning and developing our leadership capacity.

As a consequence of its intelligence and investigative activities, the ACC has been involved in a range of legal, regulatory and administrative reforms to assist government and the private sector agencies to minimise the impact of serious and organised crime. This has included providing advice and comment on several draft bills; notable examples include pseudoephedrine rescheduling and contributing to the provisions of the Telecommunications (Interception and Access) Act 1979. During the reporting period the ACC moved its headquarters to a new freehold premises in Canberra.

I note also that the committee did not raise any concerns in respect of the 2005-06 report, so there was no need for the ACC to make any changes to the report that is currently under review. The ACC, in producing the 2006-07 report, has maintained a high level of standards, and the report reflects the ACC's commitment to continuous improvement. The ACC has an ongoing commitment to maintain the same high level of governance, management and accountability mechanisms. I look forward to receiving the committee's report on the 2006-07 annual report. Thank you.

Mr HAYES—Last year the Ombudsman made a number of recommendations to the ACC. Can you tell me how those recommendations were picked up and how effective those adjustments have been?

Mr Milroy—In relation to the Ombudsman's review of the various legislation?

Mr HAYES—No. The Ombudsman's review of procedure.

Mr Milroy—To do with inspections of TI records?

Mr HAYES—Yes.

Mr Milroy—I think you will notice from the Ombudsman's report that we have been receptive to the Ombudsman's visits and we work very collaboratively with their officers. It is my understanding that we have taken on board the recommendations made by the Ombudsman and we have actually taken steps to ensure that they have been applied. If the committee so wishes, we can provide the committee with a list of the recommendations and what action we have taken specific to those recommendations.

Mr HAYES—What was the ACC's response to the Brereton case, which came to prominence last year?

Mr Milroy—Specifically in relation to—

Mr HAYES—Apart from defending it, what procedures did you build in to the process as a result of the recommendations?

Mr Milroy—I might ask one of my colleagues if they recall what the recommendations were.

Mr Outram—I am not sure of the recommendations by the Ombudsman in relation to that particular case. That is an ongoing investigation, of course.

Mr HAYES—I think there was some retrospective legislation brought down to overcome issues that examiners found at one point in time. Those who were involved in it last year would be keen to know what process has been put in place to remedy that action.

Mr Milroy—The Ombudsman's office and the examiners have held meetings—and I was present with the Ombudsman himself—to look at the administrative auditing process that the Ombudsman's office will conduct in relation to the process used by the examiners. That is currently underway.

Mr HAYES—Has the process changed at all as a consequence of that case?

Mr Milroy—No. In relation to recording their reasons, the examiners processes are, in my view, adequately recorded.

Mr HAYES—Do you mean recording their reasons before, after or in a timely fashion, or something like that?

Mr Milroy—Within a reasonable period; that is correct. The Ombudsman's office, the examiners and I held a meeting to look at the process, to see if any of it might need to be improved at the present time. That has not been resolved. I believe that in the next few months the Ombudsman's office will be carrying out one of those random audits in relation to the administrative processes carried out by the examiners.

Mr HAYES—Has there been a change of process?

Mr Milroy—No, I do not believe that there has been a specific change of process, but I am quite prepared to provide the committee with a report in relation to the position at the time the matter was raised and whether anything has significantly changed. It is my understanding from the examiners meeting, which was only held on Monday of this week, that there is no significant change in relation to the method that they use to record their reasons either at the time or shortly thereafter.

Mr HAYES—Notwithstanding the criticism that was made during that matter—after all, it did require some attention to matters other than Brereton's case—we brought down retrospective legislation last year. Has that caused the ACC or the examiners to change the way they conduct that part of their business?

Mr Milroy—No. I would probably have to provide the committee with a report about whether anything significant has changed.

CHAIR—On the table on page 33 of the annual report, I note that the number of notices to produce documents in examinations conducted is higher than it has been in the previous years but the numbers of both people charged and charges laid are down. Can you pinpoint any particular reasons for this?

Mr Milroy—One of the issues is that a lot of the investigations the ACC conducts are quite protracted and they run across more than one reporting period, so you see some fluctuations in relation to the arrests and charges, seizure of assets and seizure of drugs from one reporting period to another. In some years you see a very high number of arrests and charges. In addition to that, our menu of work is essentially subject to a review at each board meeting. You will see that in some years we increased the number of intelligence operations versus the number of areas where we conducted full investigations. So, with an annual change in focus from intelligence work to investigations, you will see variations in relation to arrests and charges. In particular, I note that a lot of the arrests and charges that are derived from our work are achieved by our partners because in intelligence operations we refer the intelligence to them and in a joint operation they do the investigative work and claim the credit.

We are hoping in our next annual report to be able to show the effect of the intelligence disseminations and to capture the results of our partner agencies in terms of the arrests, charges and seizures that they make as a result of intelligence referred to them by the ACC. We think that is a very important performance measure, but it is because of the cycle and nature of our work. Our menu of work is subject to change on an annual basis due to the strategic directions set by the board.

CHAIR—So really they are not necessarily a relevant indicator of success.

Mr Milroy—They are. One of the things I might point out to you is that there is an increase in the number of groups disrupted, and it is more about quality. We target the groups that are rated as the highest threat in the nation. They, of course, are difficult groups and individuals to investigate, and sometimes investigations are protracted, but I think it is more about looking at the quality of the disruption and the effect of that disruption than looking at it from a police assessment point of view. Police agencies are normally assessed on arrests and charges; that is a significant performance indicator. We are not a police agency, and arrests and charges are sometimes not a significant indicator of success. I think it is more about the disruption to the syndicates and individuals, in which you will see there has been a 14 per cent increase on the previous years. We are averaging per annum in the vicinity of 25 to 30 groups and individuals being put out of business. That is one of the more significant measurements for the ACC and its partners and their joint work.

Mr Outram—To add to that, the number of examinations is not necessarily an indicator of how successful they were. At the moment we are looking to drill down further into what an examination actually delivers in terms of a contribution to an intelligence collection priority or an operational result. That work is ongoing and we anticipate that in the future we will be able to report a higher level of detail and link the examinations to outcomes and outputs. At the moment we do acknowledge that we are reporting numbers and that that is not necessarily indicative of the value we are adding in collecting intelligence and evidence.

Senator BARNETT—I would like to pursue the chair's question. I am just trying to get a feel for it. You have kindly set out in your annual report a four-year analysis of the people charged, charges laid and drug seizures. Further down we have the number of firearms seized or quarantined, which has seen a significant drop; the estimated street value of drugs seized, which has seen a significant drop; and the proceeds of crime restrained, which has seen a significant drop. Tax recoveries are at \$0.49 million, compared to \$20.8 million the previous year. Can we expect a significant increase again next year? If you look at that table, the net result is a serious decrease, notwithstanding the comments you referred to earlier.

Mr Milroy—If we take, for example, the estimated value of drugs, we are actually talking about \$1.5 billion, and in the previous year it was \$4.9 million. In actual fact that is linked to the disruption of major syndicates, so there is a significant result.

Senator BARNETT—That is a huge increase.

Mr Milroy—That is right. On the firearms determination—and of course the objectives are set based on the work we have been doing with the board—the focus in 2006-07 shifted as a result of where our intelligence indicated there were vulnerabilities in terms of the diversion of

legal firearms into the illegal market. So our focus was to pursue rogue dealers and other areas where intelligence indicated there was a vulnerable part of the market, apart from us actually physically seizing numbers of weapons. Of course, there are task forces in each jurisdiction, run by police forces, which are targeting firearms in terms of possession and seizure of weapons. They continue to do that work and we continue to support them.

Senator BARNETT—Just on that point, would we see a commensurate increase in the firearm seizures of the state jurisdictions while you have had that commensurate decrease? Would that be likely?

Mr Milroy—I do not have those statistics, but it is something we could probably come back to the committee with. But a lot of our results are more aligned to the objectives set out in our work, in relation to the proceeds of crime and things of that nature. It is interesting, as you indicated, that our results vary from year to year. For the first eight months of this year, for example, our tax assessments are \$27 million.

Senator BARNETT—For what?

Mr Milroy—\$27 million.

Senator BARNETT—For?

Mr Milroy—For eight months of this financial year.

Senator BARNETT—For proceeds of crime.

Mr Milroy—I am trying to show you that things go up and down. We have syndicates that are prosecuted and previously, for example, one syndicate was investigated for a two-year period and that realised \$15 million in the second year after the operation was completed. So I do not think you can actually assess some of our results just on an annual basis, and that is one of the reasons why we tried to show the four-year figure showing the fluctuations, which are linked to the protracted nature of the work that we are doing.

Senator BARNETT—What about tax recoveries?

Mr Milroy—Yes, tax recoveries are down. If you look at the previous year, they are \$20 million. If you look at 2004-05, they are similar to the results in the reporting period you are looking at. Tax recoveries at the present moment are still tracking similarly to last year's. Again, we do a lot of work, as you would appreciate, with the tax department. You might have seen some recent press where there was an acknowledgement by the government that the \$75 million in tax assessments as a result of ACC intelligence has put quite considerable pressure on criminals. So I can understand you are looking at this on an annual basis, and that is one of the reasons why we show the four-year cycle.

Senator BARNETT—Sure, if you look at it over a cycle. I appreciate the four years being included in the annual report so you can get a trend estimate.

Senator PARRY—If I could just take you to *A report on the Commonwealth Ombudsman's activities in monitoring controlled operations*. That is the 2006-07 report. There were recommendations made, and you indicated in an answer, I think to Mr Hayes, that you could explain how each of the recommendations has been dealt with. In particular, I would like to know about recommendation No. 2:

That the ACC ensure that applications and certificates acknowledge and detail the involvement of all persons who are not law enforcement officers in a controlled operation.

Could you explain what action you have taken in relation to that particular recommendation?

Mr Outram—We have worked with the Ombudsman on implementing all the recommendations. What we have got at the moment is what we are calling internally the excellence in compliance program. Part of that has been to undertake training, learning and development, with our in-house lawyers. All applications for controlled operations now I insist before they are authorised go through one of the in-house lawyers. They come with a checklist. The issues that you have mentioned are referred to in the checklist.

Participating civilians is still an issue that we face. Participating civilians are difficult. We cannot authorise it currently under the Commonwealth legislation, but under some state legislation we can—for example, in New South Wales. We still provide the Commonwealth Ombudsman with access to applications and authorisations under state based legislation as well so they can see what we are doing.

Senator PARRY—Can I specifically go to that aspect—the covert human intelligence sources. The terminology I am used to is ‘informant’ but that is the more fancy name for an informant nowadays. My understanding is that the Ombudsman would like to see informant disclosure in the applications or in the certificates. The ACC has a position—and I think most agencies would have this position—not to disclose. Could you think of a reason why the Ombudsman would need the name of an informant?

Mr Outram—Off the top of my head I cannot. We would provide a pseudonym so there would be an audit trail back, and that would be our preferred position because it protects obviously the identity of an informant and there are inherent risks and dangers for informants.

Senator PARRY—That is understandable. And the serious feeling of the ACC has been conveyed to the Ombudsman?

Mr Outram—Yes, it has through our senior legal adviser.

Senator PARRY—And the Ombudsman's response?

Mr Outram—We would have to take that on notice. I do not recall the specific response.

Senator BARNETT—You mentioned using a pseudonym. So you actually refer to the operative without using their name; is that correct?

Mr Outram—In all cases we would use a number in fact: RI—which means ‘registered informant’—and then a number. Through our own in-house systems we can track that back to an identity. But even within our own organisation there are very few people who would know the identity of an informant other than those who are immediately handling the informant or managing those who are handling the informant.

Senator BARNETT—Yes. The recommendations says:

... detail the involvement of all persons who are not law enforcement officers ...

So you do not name them, but you do detail the involvement of those persons?

Mr Outram—As I understand it, and I may need to take this on notice, I do not think we provide their name in the report to the Ombudsman. I think at this stage we still provide a number that provides the Ombudsman with an audit trail back into the organisation.

Senator BARNETT—But you do advise who is involved in the controlled operation?

Mr Outram—Yes.

Senator BARNETT—Not their identity, but the number of people involved and—

Mr Outram—The Ombudsman would get to see the application. I again need to clarify this on notice, but my understanding is that when they do the inspection they get to see the application, so they would get to see the numbers of individuals involved in the operation, but in terms of reports the identity is protected.

Senator PARRY—So, forgetting the officers involved and other civilians, the application will contain the name of an informant?

Mr Outram—Occasionally it may, so the authorising officer—for example, me—can if requested have full sight of what is going on and understand what the risks might be.

Senator PARRY—So the Ombudsman would then see that in a subsequent inspection under the provisions of the controlled orders?

Mr Outram—As I understand it, the Ombudsman gets access to the applications and the authorisations.

Senator PARRY—And are you satisfied that having the Ombudsman look at the application with the name of an informant is secure enough? Is that allowing it to go too wide?

Mr Outram—I think it is secure enough. It enables the Ombudsman to fulfil their responsibility. The name of the informant is usually hidden and in any case is not recorded as part of the inspection process. The inspection occurs on our premises, within the secure perimeters of the ACC, in one of our offices. As I understand it, Ombudsman inspectors are all security cleared and they have a role to fulfil. So I think there is a balance to be struck. Provided

that a name is never released from the ACC in any written form, I would say that that risk is being appropriately managed.

Senator PARRY—We as a committee may have a slightly different understanding from the Ombudsman concerning this. So the Ombudsman does have access. I am wondering whether you can provide, maybe on notice, the process and who you believe will have knowledge of the name of the informant. Mr Milroy, if you have a strong recommendation that the Ombudsman should not see the name of the informant, this committee would appreciate your view on that.

Mr Milroy—Thank you. We will take that on notice.

Senator PARRY—I will move to recommendation three:

That the ACC review the training given to officers responsible for preparing controlled operation applications and provide supplementary training ...

Then it goes further. I understand that a standard operating procedure manual has been developed particularly for controlled operations. Has the Ombudsman been provided with that?

Mr Outram—I would have to take that on notice. My understanding is that they have. In fact, we consulted with the Ombudsman's office in preparing it. Furthermore, our policy now is that unless the officer applying has undergone that training the application will not be accepted.

Senator PARRY—Is the training given only to officers who will undertake the controlled operations, or is it part of general ACC training?

Mr Outram—It relates specifically to our investigators, because they are the people who will be making the applications, or to a specific area we have which deals with CHIS, as we call them—covert human intelligence sources.

Senator PARRY—If there is a combined operation with ACC and another agency involving a controlled operation, do you insist that the knowledge of this standard operating procedure, or at least some form of training by the joint agency, be conveyed?

Mr Outram—If it were a controlled operation occurring under the auspices of an ACC operation—within a determination—then we would insist that it go through our processes and that an ACC officer authorise the operation. If another agency were to ask for one of our informants to participate in one of their operations, then we would ask to see the applications but we would want to check that their policies and procedures pretty well mirror ours to make sure that, firstly, either our undercover officer or our informant were not being asked to do anything not within the bounds of legality and, secondly, they were not being placed in any position of harm or risk that could not be managed.

Senator PARRY—Could a copy of that SOP be provided to this committee in confidence? Do you have any difficulty with that, Mr Milroy?

Mr Milroy—We will have a look at the document and undertake to provide the committee with a suitable product.

Senator PARRY—Thank you.

Mr Milroy—I might mention to the committee that the ACC does not recruit or manage informants in the same way as police departments do. You referred to the use of informants by some sexy new name, but in actual fact we have a different management approach, where these people who are recruited are actually managed on the ground by our operatives. So it is a different type of model. We are quite happy to brief the committee at another time, if they wish, on the covert human management arrangement and how we actually manage our covert sources into infiltration processes.

Senator PARRY—Is there a financial aspect to that, as in payment in the form of either benefit for information or housing accommodation and additional security?

Mr Outram—Yes, we have policies and procedures for determining, for example, rewards for information, matrices and those sorts of things. There is a line. We are very careful to look for the warning signs. If an informant is likely to be compromised, we obviously have to put in place some measures to increase their security and protection and assess that. We have agreements with, for example, the Australian Federal Police that we can access the witness protection arrangements that are available through the Federal Police, if necessary, for witnesses or informants who are at risk, subject to the AFP's requirements for entering into their program.

Senator PARRY—What about budgetary issues there? Is there a line item anywhere in the annual budget for that?

Mr Outram—We do have an amount put aside within the account to fund reward payments and other witness protection costs that we might bear—because sometimes we have witnesses who require protection, and the costs are not insignificant.

Senator PARRY—When you say 'reward payments', does that include payments to informers?

Mr Outram—Yes.

Senator PARRY—Do you have some form of audit trail internally to ensure that payments are for that specific purpose?

Mr Outram—Absolutely. We have a quarterly formal audit, we have random audits and we have the internal auditor pore over all the processes. Informants are all vetted at least annually by people other than their handlers, and they are asked questions—including by psychologists and management—so that we can be assured that the rewards are being handed to the informant on the basis that they should be and that that is being accounted for in our own systems. It is similar with expense payments; some informants incur expenses through their work and we have to evaluate any claims for those moneys. We manage that in exactly the same way we would any other expenditure in the organisation. It has got to be transparent.

Senator PARRY—Who in the agency has ultimate responsibility for that process—the audit and in particular the random inspections?

Mr Outram—Ultimate responsibility probably rests with me. It is in my part of the organisation that that activity all occurs.

Senator PARRY—Thank you.

Mr Kitson—We manage something called the covert human source management committee, which is a committee formed by a couple of executive directors and a number of other SES officers. Mr Outram and I sit on that committee. I chair the committee and we review any aspect of the human source management within the agency. So there is an additional layer of inspection and internal audit that ultimately advises the CEO.

Senator PARRY—Good.

Mr HAYES—I have just got a few questions in relation to what we discussed a little last year. As I understand it, three people were charged on seven counts for not cooperating with the exercise of coercive powers or refusing to cooperate in relation to summonses issued. On those matters where people are charged and they then go before other courts, has that time delay caused serious disruptions to your investigations in any particular matters?

Mr Milroy—At the present time, something like 39 persons have been convicted and sentenced for offences under the act—that is, for failing to comply with the act in terms of being called before examinations. Twenty-six are facing trial or have been convicted and are awaiting sentencing. From a tactical point of view, the delay which we believe is initiated by individuals to avoid cooperating at a hearing, by stalling and refusing to answer questions, can on occasion limit the opportunity to obtain intelligence in relation to quite serious matters. We acknowledge that delays of this type in the process of an individual failing to cooperate and the delay for them to be dealt with by a court is something that we have discussed only recently with the Commonwealth DPP. I think there was one instance where there was such a delay before a person went before the court that eventually the judge asked them the question: would you be prepared to cooperate now so you can go back to the ACC? Something like nine months later they wanted to come back and cooperate. Of course, investigations and intelligence collection work moves on. There are instances where it does delay the process but of course we take other steps to move on and hopefully find the intelligence legally by other means.

Mr HAYES—I know in the past people have referred to that as almost a need for contempt of court provisions—just using that colloquially as a term.

Mr Milroy—That is right.

Mr HAYES—Is there a need for actually tightening that up so effectively the trail does not go cold over protracted court proceedings while people are trying to avoid cooperation in terms of the coercive authority which the ACC has?

Mr Milroy—As you may be aware, there was a review of the act carried out by Mr Trowell QC, and I believe that matter does touch on this issue. I believe that it is a matter that is currently under consideration by the department. We will wait to see what the department's views are on the Trowell review in relation to the contempt issue.

Mr HAYES—It would be a concern for most people, I would have thought, that this could be deployed as an orchestrated tactic by individuals to frustrate serious and organised crime investigations.

Mr Milroy—Of course, that is quite correct; and that is one of the reasons why we strongly supported a response to the trial review: so that issue could be considered by government. It is my understanding that it is a matter that is currently under consideration by the department.

Mr Outram—It is increasingly becoming a problem with some particular crime groups. There appears to be a tactic emerging amongst certain types of crime groups and the counsel who are representing them. I know the examiners are increasingly concerned that, over time, that will undermine the effectiveness of the powers in dealing with serious and organised crime. I am particularly talking about criminals with access to good legal counsel who operate with a degree of sophistication. They generally tend to be the people we are focusing our efforts on.

Mr Milroy—Is a matter that we would probably include in any submission to the committee's upcoming review of legislation dealing with serious and organised crime.

CHAIR—Mr Milroy, I am looking at page 70 in relation to the Australian Commission for Law Enforcement Integrity. Is the commission in a position to provide more detail about the nature of the matters referred to the attention of the commission? I see there that a number of matters have been referred to the commission.

Ms Bailey—Are you referring to the legacy of things that were referred when ACLEI was set up? Are you looking at the second paragraph?

CHAIR—Yes, I am looking at the second paragraph.

Ms Bailey—I think that refers to the legacy issues that I think the CEO brought to the attention of ACLEI when it was established. They were not formal complaints that were handed over to them, as I understand it, but rather as a way of providing a background to the commission of some issues that had been dealt with before. They were advised of those. That is my understanding.

Mr Milroy—That is right. At the time when ACLEI—

CHAIR—I am not familiar with those particular issues. I wonder if you could expand on them.

Mr Milroy—I notice that they are actually referred to in appendix D, which is on page 157. When ACLEI came into being, in the discussions that I had with the then ACLEI commissioner—as has always been the case; the ACC has always been fairly transparent and briefed the Ombudsman's office on matters that fall into the category of code of conduct issues or potential corruption matters—we took the course of action of briefing ACLEI on the matters appearing in appendix D. That was really for them to have some understanding of the cases that were currently being looked at by the ACC. Of course we have a policy that any matter that is considered serious is investigated by an external investigator not an internal investigator. They had a look at these matters and we provided them with briefings. I do not have the table, but I

believe that they indicated that some of the matters were not matters for ACLEI under their definition. At the time it was a briefing that we provided to them. Some of the matters of course they were currently overlooking. In relation to the investigator that we appointed, they were keen to understand the result of the investigation. I can provide you with a little more information if you wish in terms of the status of those matters, since time has moved on since the submission of this report. I know that we will be providing some comments to the ACLEI PJC tomorrow in relation to this.

CHAIR—That would be welcome. I have some more questions but I think Senator Barnett can have a go.

Senator BARNETT—Just to finish off on appendix D, I had itemised six matters there that are under investigation. When you respond on notice, could you give us a status report on each of those six that are currently under investigation.

Mr Milroy—Yes.

Senator BARNETT—Thanks very much for that. The Ombudsman made reference in his report to three outstanding recommendations that he had also referred to in his previous report, in 2005-06, on page 9. I was just wondering if they have been addressed. One was that to ensure that:

- notifications are sent to the CEO of—
the Australian Customs Service—

... when the applicant for the controlled operations certificate believes that illicit goods involved in the conduct of the operation may be dealt with by the ACS ...

And then there were the two other recommendations in the Ombudsman's report. Have they been addressed?

Mr Outram—They have been addressed. We may have to take that on notice. With the first one there were some legal discussions between our lawyers and the Ombudsman about whether every application should be automatically referred to Customs—if we should not have to do so when we have got some degree of certainty that something is going to occur at the border, the where and when.

Senator BARNETT—If you want to take it on notice, that is fine. There were three matters that were referred to in last year's report and again in this year's which he said were outstanding. So it is an obvious question, I think.

My next question relates to the *Picture of criminality in Australia* report, which I have read. I think it was released last year—and thanks for preparing the *Organised crime in Australia* version. In your view, do you believe that is adequate in terms of increasing public awareness of the issues such as resourcing policy decision makers, assisting law enforcement agencies around the country, to plan the resourcing commitments that they might make into the future? I appreciate that it is the first cut, as it were, or the first such report that you have prepared.

Mr Milroy—We actually provide, approved by the board, *Picture of criminality*, which is a highly protected report on organised crime in Australia. That is prepared following consultation over a 12-month period with all the jurisdictions and all the intelligence agencies, and it is my understanding that the board member agencies—the police forces and others—use that product to assist in their decision making for future planning in terms of organised crime, as well as the national criminal intelligence priorities that we produce and the national criminal threat assessments on serious organised crime, which address those groups that have been identified as being the greatest level of threat and harm in the community, the groups themselves, those identified as emerging groups and other potential groups. So we believe those sorts of products are used for decision making in the system, and that has been confirmed by the jurisdictions.

This report is the first publicly released version of *Organised crime in Australia* and was approved for release by the board. It was a matter, of course, that was identified by the previous parliamentary joint committee review of the act when they suggested it would be something of use to the community. In marketing that to date we have not completed any evaluation because the report has been publicly released. In addition, we have targeted some of the top 100-200 CEOs across a broad range of sectors. We are also progressing some of those discussions to raise the awareness level of CEOs in certain sectors that we believe could be vulnerable to an attack by organised crime, and that is work that is underway at present. We are hoping that an evaluation of the report itself will show how it has been received by not only the public but also by business. We have received some comments from certain sectors, and it is of interest that they are the sectors we are currently collecting intelligence more directly from. So that evaluation process is only just starting, and there is quite a lot of work to be done to look at how effective this report is. Kevin might wish to comment further; he has had quite a lot of discussions with our stakeholders in relation to how they have received the product.

Mr Kitson—The initial indications are that the product is useful in providing an authoritative aggregation of some of the key issues that organised crime presents. The distinction between this document, which is publicly available, and that which the CEO refers to—the *Picture of criminality in Australia*—is really the classification level. The *Picture of criminality* contains a lot of methodology based information that we generally do not think is appropriate to release to a wider audience, but there are aspects of that which we will take forward in our discussions with certain parties in the affected sectors so that we can work with them to target harden. But in terms of the capacity of this document to shape law enforcement policy and to shape other responses, it is really not designed for that. It is designed for information and awareness, as a starting point for debate and to encourage others to talk to us—particularly those who might not recognise that they have a role to play in building resilience against organised crime. The initial responses that we have received from a couple of sectors that do not perhaps have the highest profile have been very warm indeed. They are looking to engage with us as part of a process that is designed to bring benefit to their sectors and to the community more generally.

Senator BARNETT—I understand that you have to get a balance in these things. I have just perused the UK SOCA report, which appears to be more detailed and more comprehensive than your one. I have not got to the bottom of it, but in the US I am aware that there are some other documents. In New Zealand, there is a new entity being established, the Organised and Financial Crime Agency of New Zealand. I do not know if you have considered or reviewed some of those overseas examples and thought about the merit of having something similar here in Australia.

Mr Kitson—We have. We looked in particular at the Serious Organised Crime Agency model from the UK. One of the key differences for us is that, because of the way in which we collaborate with agencies in the national security environment to build a much stronger and more robust understanding of the wider nature of threats here, a lot of the material in the *Picture of criminality* document contains information which has some original material in much more highly classified information. Our initial attempts to disentangle that but still leave sufficient meaning in it left us in the position where we wanted to go with a slightly broader ranging and higher level document. But we acknowledge that there is scope to come closer to the SOCA model, and that is part of our thinking for the out years, although not necessarily next year. There is scope for something a little more detailed.

Senator BARNETT—Thank you. I have two administrative questions. Is the ACC subject to the government's efficiency dividend requirement?

Mr Milroy—Yes, we are.

Senator BARNETT—How many times have you met with Minister Debus since his appointment, or any other minister?

Mr Milroy—Probably on three or four occasions—maybe five.

Senator BARNETT—Minister Debus?

Mr Milroy—Yes. There have been quite a number of meetings between my executive and the minister's chief of staff and other advisers. They would be a lot more frequent. Basically, there is contact with the minister's office on a daily and weekly basis.

CHAIR—We have to finish in a second, Commissioner, but we have a number of other questions that we would like to put to you. We may send them off through the committee to you for your response. To follow on from Senator Barnett's questions on making decisions about operations, you have investigated, say, maritime and aviation transport. Are they things that you are referring to when you say that you may move into surface transport?

Mr Milroy—The transport sector determination was as a result of an IGC resolution to the ACC board that the board may consider the ACC looking at criminal infiltration into the transport sector, which at that stage was defined as airport, maritime and transport more generally. At this stage we have nearly completed the work in the airports and the maritime sector and also of course we have collected intelligence in relation to transport a lot broader than that. We will be providing the board with a submission in June this year in relation to the work that we believe we have completed. It will show that we have met the objectives that were set in relation to airports and maritime and will also provide the board with the intelligence that we have collected relating to the transport environment. The board will then be in a position to make a decision as to whether or not the ACC is required to do anything further in that area.

CHAIR—Are the determinations annual decisions, or do you make them for a longer period or are they reviewed annually?

Mr Milroy—Yes, there is a—

CHAIR—Is that appropriate rather than having, say, a five-year plan or something like that? Or am I off key there?

Mr Milroy—The board does look at the strategic three- to five-year area based on the papers that we provide it. I think it is felt that on an annual basis it is important to review the work that the ACC has done. In actual fact, in some cases we provide the board with briefings on a quarterly or biannual basis. If we complete some of the objectives that have been set out in the determination framework, then, of course, we indicate that our intelligence suggests that we should move to another area because we have completed the objectives. We go back to the board and indicate that there may be some variation in our work in that particular area. You will notice from some of our determinations that ran for longer than one year, we actually changed the focus because, if you complete certain areas of work, there is no use in redoing it. It is important to remember that we should not be doing the work of traditional police because that is not what we are there to do in determinations. We are very conscious that we need to be going in a different direction and not duplicating what police forces do, so I think it is important that this work is reviewed as regularly as possible. Some of our work, you will notice, has been running for a long period of time. The high-risk crime determination, for example, is seen as a long-term determination, subject to board consideration.

Senator PARRY—Mr Milroy, I know this has been raised in a less formal setting, and I would like to get it in *Hansard* for obvious reasons in a moment. There are no staff in Tasmania. On this committee, three out of the four senators are Tasmanians, which is very unique. Are there any future plans or any budgeting plans to get an office in Tasmania? Is it warranted? I know you have made some comments privately to us in the past about this.

Mr Milroy—We have an excellent working relationship with the authorities in Tasmania and we are currently making arrangements for an intelligence collection coordinator's position to be based in Tasmania as a permanent ACC position. Up until this date we have worked more on a case-by-case basis with the Tasmanian police, who had quite a number of people on secondment working at the ACC until recently. We believe that model is appropriate. We had a similar arrangement in the Northern Territory until we moved into the Indigenous task force. We carried out hearings in Tasmania and we actually carried out a lot of field intelligence collection work on the Indigenous task force. Where we see that there is not a requirement to have a permanent presence in large numbers, we move in in a task force model, do the work and then move back out. But we will leave this permanent intelligence collection coordinator's position in place.

CHAIR—We have other questions we would like to put to you, so we will write to you and seek a response. I thank you and your officers for coming along this afternoon. We will be in touch.

Senator BARNETT—I have a question before the ACC disappears. With regard to the document that has just been tabled, is it confidential or otherwise? That document is a response to my question at the hearing on 17 March.

Mr Milroy—We responded to your request and that is basically for the committee's examination.

Senator BARNETT—I am just asking whether it is in confidence or is it a public document?

Mr Milroy—It would be in confidence.

CHAIR—It says 'in confidence' at the bottom of the document and I assume that is what it means.

[2.35 pm]

PHELAN, Assistant Commissioner Michael, Chief Police Officer, Australian Capital Territory Policing, Australian Federal Police

QUAEDVLIEG, Assistant Commissioner Roman, Chief of Staff, Australian Federal Police

CHAIR—I now welcome representatives from the Australian Crime Commission board. I invite you to make a short opening statement at the conclusion of which the committee will ask you some questions.

Assistant Commissioner Phelan—Thank you. I should advise you that I am a member of the ACC board. I have a very short statement I would like to read. First, I will start by providing an apology from the chair of the board, Commissioner Keelty, who returned from overseas late yesterday. He has asked that I represent him, as chair, at this hearing. Members would be aware that the board comprises the commissioners of each of the Australian policing jurisdictions, as well as agency heads from several Commonwealth agencies, being: ASIC, Customs, ASIO and the Attorney-General's Department. I am therefore a member of the board in my role as the Chief Police Officer for the Australian Capital Territory, although my comments today will be from the perspective of the ACC board and not necessarily from the perspective of the ACT or of ACT Policing. I am also a member of the board's strategic directions committee, which is referred to in the annual report and I will also touch on it later on in my statement.

As an introduction I should also acknowledge that I have here with me today Assistant Commissioner Roman Quaedvlieg, who is chief of staff to Commissioner Keelty. Federal Agent Quaedvlieg is not a member of the board but can assist in providing, through me, some insight into the chair's views, and he can act as a conduit back to the chair if necessary.

Before I provide some initial comments on the ACC report for 2006-07, I think it is important for the committee to understand where the board fits in the process. Please stop me if you like. The ACC board has its basis in the act, in particular, section 7C. The act essentially mandates that the board is to provide a strategic oversight of, and a direction to, the ACC. It provides responsibility for authorising investigations and special operations, including the use of coercive power if needed, to address significant areas of criminality.

The board in essence has the responsibility to set the ACC's menu of work according to identified priorities and needs. It has a responsibility to report on those activities to the intergovernmental committee on the ACC, which is comprised of ministers from all the states and territories and the Commonwealth. There are mechanisms in place to do this and these are complied with.

The decisions of the board are implemented through the CEO, who is a non-voting member of the board. The CEO has responsibility for the management and administration of the ACC and the coordination of control of operational activities. Having said that, he is probably the most appropriate person to contact in terms of questions on such matters, and I understand you have already had the opportunity to speak to him today.

That having been said, I should note that the board takes a very keen interest in the overall administration and performance of the ACC. The board receives regular reports, both in and out of session, on the ACC's budget, staffing, outputs and activities and on various agency administration and management issues. The board also receives regular reports and briefings from the ACC audit committee. This information assists the board in a number of respects, particularly in setting the ACC's menu of work within the available resources, and in reviewing a particular determination's performance or suitability within the resourcing available.

Board members also have regular meetings with the CEO on a range of matters, and I understand that the chair actually has a regular fortnightly meeting with the CEO of the organisation.

As noted in the annual report, the board met regularly during 2006-07 and authorised several determinations and/or task forces in a range of key areas. I will not necessarily go into those, but they are articulated in the report. As also noted in the annual report, the board has continued to monitor the ACC's performance against this menu of work and we as a board are satisfied that an effective contribution has been made to the overall Australian law enforcement environment. Its contribution is driven by intelligence-led targeting of serious and organised criminal activity. The key achievements of the ACC are outlined in the report and they support this view.

I note particularly that the ACC has shown itself to be responsive to the needs and directions of the board when they are provided. The previous and rapid establishment of the National Indigenous Violence and Child Abuse Intelligence Task Force is a clear example of the responsiveness of both the board and the ACC to emerging priorities. It has highlighted the collegiate nature, rather than the jurisdictional interest, of the board's approach to dealing with such matters.

The board establishes and monitors this menu of work within the context of the ACC's overall strategic direction and framework. In setting this direction and framework, the board has endorsed the set of national criminal intelligence priorities, which the CEO articulated, and also the ACC's assessment of the picture of criminality. I should note that the processes and procedures for setting the ACC's strategic direction are a key focus of the board now and into the future.

During 2006-07 the board examined a range of related issues, particularly the links between the ACC's menu of work and identified intelligence priorities. The board also examined appropriate frameworks for structuring the menu of work and how it is targeted. This focus continues in 2007-08 as the board looks at the mechanisms in place to ensure that the ACC maintains its clear and unique role in the Australian law enforcement environment and that its menu of work is appropriately focused and responsive to the needs of the ACC, the government, and other member and client agencies. The board's Strategic Directions Committee—the SDC—of which I am a member, will continue to play a major role in this and the broader board processes. The SDC also met regularly during 2006-07, providing advice to the CEO and the chair on a range of issues and often considering issues prior to full board examination. I would now welcome any questions that the committee may have.

Mr HAYES—Firstly, Assistant Commissioner Phelan, my congratulations on your appointment as Chief Police Officer in the ACT.

Assistant Commissioner Phelan—Thank you.

Mr HAYES—One of the things that, I suppose, the ACC has done reasonably effectively for some time—as, indeed, did its predecessor, the NCA—is seconding operational police in investigative roles into, in this case, the ACC. How is that effectively being managed in your individual police jurisdictions? How is it being coordinated and how long is the tenure of your secondments at the moment?

Assistant Commissioner Phelan—I can certainly answer that from an AFP perspective, both in ACT Policing and as a member of the AFP. The secondments to the ACC are centrally managed through the AFP management system. Positions are advertised, and then people are transferred or seconded over. There is generally a term of appointment, either two years or two years plus an option. Then those people get fully seconded over to the ACC for those operations for the period of time that they are over there. That process is managed centrally through the AFP for our secondees. Each of the agencies, I would imagine—I cannot speak for them all—has similar processes, and once staff get seconded they work for the ACC.

Mr HAYES—When they are seconded over, do their powers—whether their powers of arrest or, effectively, their policing powers—come by virtue of the fact that they are officers of the AFP before being seconded?

Assistant Commissioner Phelan—Yes, if they are AFP then they carry with them, of course, their sworn status as AFP members, so all the powers and responsibilities vested in an AFP officer carry over to them while they are working for the ACC. It is the same with state police who get seconded to the ACC; they come over with their own powers. There have been issues in relation to state members who have been sworn in as special constables of the AFP, and it is my understanding that that is the case. That might be something that the CEO could probably give a more direct answer on, but it is certainly my understanding that sworn police officers from other jurisdictions are also sworn in as special members of the AFP to enable them to be given the Commonwealth powers.

Mr HAYES—Weren't there also some issues about former state or territory police being employed by the ACC, who are not presently sworn police, effectively exercising police powers?

Assistant Commissioner Phelan—That is right. It is my understanding that those issues are still before the ACC. We are still working through in an administrative way how the ACC can make that occur. There are, of course, some people who are not sworn police in any jurisdiction who are staff members of the ACC, and that is a process that both the ACC and the contributing agencies are working through at the moment.

Mr HAYES—Digressing a little, it appears to be reasonably obvious that there is going to be growth in joint operations. The ACC is obviously seized with coercive powers. The emergence of the practice of people who are subject to directions refusing to comply or refusing to cooperate with a view to simply perpetuating a series of court cases elsewhere: how much of a problem is it in terms of prosecuting serious and organised crime? How much of a frustration is it to agencies such as your own to have matters held up in the courts while people are refusing to cooperate in respect of being given directions under the coercive provisions of the ACC?

Assistant Commissioner Phelan—You ask me as a member of the board I suppose, but as a senior police officer we follow the rule of law. These process challenges occur through all sorts of legislation and processes. Whether or not I get frustrated is not necessarily an opinion I can hold. It is really a matter for the courts to determine based on the legislation that is put forward by the parliament. Having been a police officer for 23 years, I have seen many laws challenged in many different forms and it is not sometimes until these laws are challenged that appropriate steps are taken. But at the end of the day that is a matter for the parliament, not one that the board would pass comment on.

Mr HAYES—It is not so much that they would want to frustrate the rule of law or anything, but in terms of investigating serious and organised crime would there be a general concern that protracted litigation elsewhere could frustrate or let the trail go cold?

Assistant Commissioner Phelan—As we know as police officers, an investigation is always best to do at the time. With the expiration of time, things always get harder to do. In that very broad sense then any sort of protracted litigation could ultimately harm any investigation. But that is not unique to the ACC; any normal police investigation even outside here could be tied up in litigation for years as well.

Mr HAYES—It has been recommended I think on the last couple of occasions by the board that the numbers should be increased to have the Commissioner of Taxation or his nominee included on the board. Is that still the position of the board of the ACC?

Assistant Commissioner Phelan—I have not heard any contrary view to that. I know that the board has passed comment in the past that that would be a desirable outcome and it was a recommendation of the PJC. It is my understanding that the collective view of the board has not changed.

Senator PARRY—How come it has taken so long for that position to be accepted, taken up or acted upon? This has been under discussion now for some time.

Assistant Commissioner Phelan—The matter of course is not one for the board or indeed the ACC. Positions on the board are legislated, so it requires a change in legislation for that to occur. It is a matter for the government.

Senator PARRY—While we are speaking about the government of the day, I think in the last financial year there was \$74 million for the ACC and this year gone there was \$89 million for operating expenses. Do you see a need for an increase for this projected year in light of your position on the strategic direction committee? Do you see a need for increased revenue to run the ACC?

Assistant Commissioner Phelan—Whilst on the strategic direction committee and also a member of the board, the matter of finances for the organisation are closely monitored by the board. Certainly the submissions that are made are those that are supported by the board through the CEO. The ACC through the board when we are evaluating priorities and making determinations, work within the budget framework that we are given. The menu of work determined by the board for the ACC to implement is done within the budget constraints that are

there. Like everybody else, we know there is a finite amount of money. Whatever the allocation is is whatever the ACC works within, and the board makes its decisions accordingly.

Senator PARRY—Has the board discussed the efficiency dividend?

Assistant Commissioner Phelan—They are questions that really do go to the CEO and the management of the ACC and how they will apply it. I do understand that the efficiency dividend will be applied. That is something that no doubt the ACC will bring to the board in due course. That is something we will have to wait until after budget time for.

Senator PARRY—The attendance record of the board is quite good, which means there is obviously great input and great interest across the nation. Leaving the ATO commissioner to one side, does the board have a view that this is the right structure? Also, looking at it again from a strategic perspective, does the board have a view about any legislative reform that it might require in the act, apart from the ATO commissioner, to move ahead?

Assistant Commissioner Phelan—In answer to the latter question, there is no specific view of the board at this stage about legislative reform. I sit on two other national boards as well, CrimTrac and ANZPAA. The ACC board is a board of the heads of every law enforcement agency in this country. It would be hard to find a more high-powered law enforcement board. In the meetings that I have been to the discussions of the board have been extremely robust and views generally from across Australia are able to be brought to bear at the board. It does have a very solid representation and attendance, as you quite rightly pointed out. It is not something that board members treat very lightly. Board members do take their responsibilities quite seriously and they attend the board meetings, which are quite robust.

Mr HAYES—Sorry, what is ANZPAA?

Assistant Commissioner Phelan—ANZPAA is the Australia and New Zealand Policing Advisory Agency. It is a conglomeration of a lot of the old common joint police services.

Senator PARRY—In short, a very strong summary would be that the board and the governance models are working exceptionally well.

Assistant Commissioner Phelan—That is right.

Senator PARRY—Without putting words in your mouth!

Assistant Commissioner Phelan—Without putting words in my mouth. I can only speak from my experience at the board and I can tell you firsthand that the actions of the board through not only the board meetings but also the SDC provide a great framework to be able to give strategic direction to the ACC. Not only my view but the view collectively of the board is that they discharge their duties well.

Senator BARNETT—Is there any rationale behind the CEO's appointment for, I understand, one year and why that would be a reappointment?

Assistant Commissioner Phelan—I am not sure. I would be passing an opinion there; I do not have all the facts about it. Certainly the recommendation for the CEO is from the minister to the Governor-General on advice from the board, so—

Senator BARNETT—But you are on the board.

Assistant Commissioner Phelan—Sorry?

Senator BARNETT—You are representing the board today.

Assistant Commissioner Phelan—I am.

Senator BARNETT—Isn't this a decision or recommendation from the board?

Assistant Commissioner Phelan—We are moving forward with a new agency and a new government and I suppose there is a decision made as to how long tenure should be. But, really, that is a question for the minister.

Senator BARNETT—But the minister makes the decisions based on recommendations from the board, and you are sitting here today and we are asking you questions. So what is the rationale behind that recommendation?

Assistant Commissioner Phelan—I suppose it is a collective view on the board that the appropriate length of time to recommend to the minister in this period is one year.

Senator BARNETT—Okay. Going to the \$1.8 million surplus in the annual report on page 113, that is obviously a smaller surplus than the previous year. That is apparently less than two per cent of revenue. What is the prognosis for the next 12 months?

Assistant Commissioner Phelan—It is my understanding that, at this stage, we are projecting a small deficit of around \$3 million. That is probably a question that is best directed to the CFO. The board monitors the performance, but the ultimate running and managing of the organisation rests with the CFO.

Senator BARNETT—Sure, but the board would approve a budget, presumably.

Assistant Commissioner Phelan—We do, yes.

Senator BARNETT—And the budget would be a budget for the next 12 months.

Assistant Commissioner Phelan—Right up until now, yes. After budget time the board would approve its budget and how its money would be allocated against programs and against priorities for the next financial year. We then receive regular progress updates on that at both SDC meetings and also at board meetings.

Senator BARNETT—When was the budget signed off?

Assistant Commissioner Phelan—It would have been before my time, but for 2007-08 it would have been, I suppose, some time after May of last year.

Senator BARNETT—So that budget has not taken into account the government's two per cent efficiency dividend?

Assistant Commissioner Phelan—At the time that the budget was allocated? No, of course not.

Senator BARNETT—Do you know now what the revised budget is, taking into account the two per cent efficiency dividend?

Assistant Commissioner Phelan—It is my understanding that we are still projecting a deficit of up to \$3 million.

Senator BARNETT—In relation to the \$89.6 million in revenue that you have had for the last 12 months, there are some tied grants that you have that are part of the budget, I presume, for the next 12 months. I understand it is about \$30.8 million in tied grants. Do you have an understanding, in terms of budget forecasts for the next few years, as to whether those tied grants will remain over the next few years? Do you support tied grants for budgeting purposes?

Assistant Commissioner Phelan—I have been working in the environment of tied budget funding for a number of years in the AFP. That is a process that government agencies work through. As for the budgets for the next couple of years, I am quite happy to take that on notice so that we can get some accurate advice to you rather than have me guessing.

Senator BARNETT—All right. With regard to Mr Hayes's questions earlier regarding controlled operations, we had the Ombudsman here this morning. We had some discussions in which the Ombudsman made the point to us that he was only entitled to look at matters where he had federal jurisdiction and the controlled operations were subject to and allowable under federal law, and that other controlled operations were subject to state law and so he had to, of his own motion, make inquiries into or investigate certain state matters.

Assistant Commissioner Phelan—Yes.

Senator BARNETT—We have asked, on notice—and I do not know whether you can assist; this should probably even go directly to the ACC—what proportion of the controlled operations are Commonwealth approved and what proportion are approved by state legislation. Do you know?

Assistant Commissioner Phelan—I would have no difficulty in answering that question if I actually had that data. That would be something that, I would imagine, could easily be provided on notice very quickly.

Senator BARNETT—I am happy to put that on notice.

Assistant Commissioner Phelan—It is worth noting, though, that the use of different legislation, whether Commonwealth or state, is one of the beauties of the ACC, and, of course,

one of the reasons the ACC was created was so that there could be an effective use of state and Commonwealth law to enhance the fight against the criminal environment right across the country. So it is quite appropriate that there be a mixture, I understand. Having worked in the controlled operations environment for a number of years, I know that the Ombudsman's office has an extremely robust oversight mechanism, and my experience is that the state ombudsmen's offices have a very similar robust monitoring regime as well.

Senator BARNETT—Sure. Finally, with regard to the area of coercive powers, I presume the board is very familiar with this sort of topic. It is a topic that is familiar to a lot of entities such as yours all around the country. Under section 28 of the act there is the power to summons witnesses and take evidence. I am particularly interested in the witnesses who are not necessarily suspected of being involved in criminal activity when they are summonsed to appear by the ACC and in the ability of those entities or persons to obtain recompense for their time and for the cost of being pulled off whatever they are doing at the time to appear before the ACC. Has the board given any consideration to that and to whether the act is being properly and fairly implemented to ensure procedural fairness?

Assistant Commissioner Phelan—Certainly not in my time at the board, but I am quite happy to take that on notice. I am sure the ACC can get us that sort of information. It is important, though, that people who are not suspected of criminal activity also be subject to the same type of summoning power because they do hold information—quite innocently—in relation to criminal activity and it is important that the ACC have access to that type of information; hence the use of the laws. With regard to recompense for those types of activities, I am sure we can find some advice for you as to whether or not it has actually been considered by the board in the past.

I would say that those sorts of things that are more to do with the day-to-day running of the organisation would be worked out within the ACC themselves. If they find a legislative gap or a shortcoming then they would normally bring that up directly through either the IGC or the relevant ministers. That is not something generally that the board would deal with; we are there to deal with the good governance of the organisation, setting the strategic direction of the organisation and indeed the specific things that are in the act. Things like that fall very squarely within the operational activity.

Senator BARNETT—I am sure the ACC is considering or listening to what is happening and I wonder if that issue could be taken on notice. I understand that there is a provision in the act—which I have not found yet—where there is a discretion for that witness to apply to the minister to obtain recompense for costs incurred or for whatever costs are involved. So if we can be alerted to that, that would be most helpful.

Assistant Commissioner Phelan—Okay.

Senator BARNETT—I appreciate that.

CHAIR—Page 49 of the annual report states that coercive powers had been used extensively in previous years under the people trafficking for sexual exploitation determination. That determination was enacted in 2006-07 for only a brief period and four section 28 notices were issued in the months of July and August. These were issued in support of partner agencies

finalising trafficking relating inquiries. After receiving findings in April and November 2006, the board concluded that the determination had met its objectives and could be concluded. I suppose anecdotally the impression one gets is that there is an actual increase in this people trafficking going on. I am sure I speak on behalf of most of my colleagues, if not all of them, when I say that we are a bit concerned that this inquiry may have been prematurely terminated. I wonder whether or not the board might consider a new determination, possibly with different parameters.

Assistant Commissioner Phelan—Sexual exploitation and people trafficking is an extremely serious issue that weighs on all of the jurisdictions, but it is my understanding that the determination itself is still available to agencies to actually use should we need to be able to put people back before the commission. The AFP at times has actually used the examiners to use the coercive powers under the act to do that sort of stuff. So my understanding is that it is still open. I would not mind taking some advice on that just to check for you.

CHAIR—If you could, that would be helpful. It looks from the statistics there that it is not on the front foot.

Assistant Commissioner Phelan—Of course all of the determinations that are made are determined with the national criminal intelligence priorities at the time.

CHAIR—I have a copy of your publication here and I cannot see any determination currently dealing with people trafficking for sexual exploitation. Commissioner, do you want to have a look at this?

Assistant Commissioner Phelan—I am quite happy to take that on notice and get back to you.

CHAIR—I am aware that the committee have expressed concern about what we see as this not being a priority for the board. Certainly it is for us. If you could come back to us on that, we would appreciate it.

Assistant Commissioner Phelan—Certainly.

Senator BARNETT—I have one other follow-on question. Appendices A, B and C of the report refer to court proceedings, significant court matters and court results. I was wondering if the board has considered any lessons learnt from those court proceedings in the context that there has been a lot of litigation, in the Supreme Court, the Federal Court and even the High Court, involving the ACC and the powers that it used et cetera. They are referred to in the annual report. Has the board reviewed or received advice on lessons learnt from those court cases, whether they be on policy related matters or technical related matters, and do you have any views that you would be recommending to us in terms of your response to that litigation?

Assistant Commissioner Phelan—I have no specific response on behalf of the board in relation to that litigation other than what has perhaps already been put by the CEO of the organisation. But the board is very cognisant of the issues that sit around the operations of the ACC. There are postoperational assessments that are done and brought to the attention of the board, so those things do go into the board's consciousness when doing that. That is really the operational realm of the organisation. But, having said that, the board is very conscious of the

activities that affect the ACC and those things that operate around their determinations and the powers.

Senator BARNETT—We have received today a letter in confidence from Alastair Milroy regarding some litigation that has followed in the last many months, and they have done a summary of that and some of the lessons learnt. That is an in-confidence document. I was wondering if that has been drawn to the board's attention and if you have considered the lessons learnt as a result of that document and its advice to the board.

Assistant Commissioner Phelan—As a whole, I cannot pass comment on that at this stage.

CHAIR—Thank you for attending this afternoon.

Proceedings suspended from 3.06 pm to 3.20 pm

McFARLANE, Mr Alastair John, Private capacity

CHAIR—Welcome. I invite you to make a short opening statement after which the committee will ask you some questions.

Mr McFarlane—I am with the School of Humanities and Social Sciences at the University of New South Wales at ADFA. Until 1999 I was with the AFP. Having retired from the AFP in 1999, I am obviously not current on the day-to-day performance of the Australian Crime Commission and so, with your agreement, I would be better positioned to comment on the sort of strategic context in which the ACC is located.

The abolition of the NCA, the ABCI and OSCA and the establishment of the ACC in 2003 created an opportunity to build on the achievements of the earlier bodies and establish something new which would make a major contribution to Australian law enforcement. The ACC retains the coercive power given to the NCA and also the coordination and leadership of Commonwealth, state and territory efforts against certain nationally recognised determinations. It takes over the Australian Criminal Intelligence Database (ACID) from the ABCI, the annual Australian illicit drug report and also the work that OSCA was doing in assessing the criminal environment and the longer term criminal trends.

In comparison with the United States, the United Kingdom and even Canada, Australia should have a very simple law enforcement environment, but we are still suffering from the hangover of the pre-federation colonial approach to law enforcement whereby our criminal laws and criminal justice systems are still largely state based and not harmonised. Our police structures, communications and data handling processes lack uniformity and, given that every police force is under continual pressure to reduce crime, the road toll and so on, most law enforcement policies and strategies are largely influenced by parochial rather than national interests. Even our road laws differ across the nation, rather like our rail gauges.

Unfortunately, law enforcement is not mentioned in the Australian Constitution so, unlike the United Kingdom, we do not have a central authority like the Home Office, which has the responsibility for allocating, in that case, 50 per cent of the funding of the 51 police forces in the UK, including Scotland, meaning that the national government can enforce common laws and standards, interjurisdictional cooperation—that is, mutual support—interoperability, and the lateral transfer of officers.

Some hold the view that the coordination and investigative role of the ACC should be handed over to the AFP, but in my opinion this would be very difficult to achieve in the present circumstances. There are a number of reasons for this. Firstly, there is no state or territory ownership of the AFP as there is for the ACC, without which coordination and cooperation problems arise all the time. Secondly, the AFP is heavily committed on so many fronts that there is no guarantee that it could in the present circumstances deliver the professional effort against organised or national targets. There are a number of reasons for this: firstly, the AFP has never had a national as distinct from a Commonwealth mandate and the states and territories are much more comfortable with the AFP having that role; secondly, the AFP lacks personnel resources to allocate sufficient professional staff in the long term for national operations; and, thirdly, the fact

that a high proportion of the AFP budget is tied funding so that it cannot move around according to the evolving needs of the criminal environment makes strategic and resource planning and operational flexibility extremely difficult. There are some other reasons too, but those are some that I think encourage us to the view that the ACC is best placed to fulfil that role.

There are some difficulties in fulfilling this centralised role. One of the important issues that the ACC deals with is the question of establishing national criminal intelligence priorities—NCIPs. But even with the board's endorsement the agencies that are members of the board cannot be forced to assign resources to cover national priorities. NCIPs cannot really drive anything unless there is a willingness to do so. This contrasts markedly with the national foreign intelligence collection priorities coordinated by the Office of National Assessments, where adherence is obligatory, at least for Commonwealth agencies. But to be fair to the state and territory agencies, most jurisdictions are so overwhelmed by their own crimes at the moment that their national, let alone Commonwealth, priorities have to take their turn.

If I could talk a little bit about organised crime. At this stage only the ACC looks at organised crime on a national basis whereas the AFP and the ACS are more concerned with illicit commodities crossing the border. Only the ACC studies the structures, the entrepreneurial linkages, the modus operandi, money laundering, vulnerabilities, gaps in our coverage, and disruption strategies relating to organised crime. The ACC has made an assessment that something like 300 organised crime groups exist in Australia of which about 30 are particularly significant.

The ACC is also in a better position to look at the so-called soft underbelly of organised crime activities in Australia such as the illicit tobacco market, the importation of steroids, vehicle rebirthing and counterfeit branding, most of which produce large criminal profits. Organised crime is all about money and power, so it does not matter what commodity they are dealing with; it is the capacity to make the maximum profit at the minimum risk that really counts.

The other issue I would like to touch on in this brief introduction is the question of intelligence collaboration. The ACC has made a big effort to close the gap between criminal intelligence and criminal investigations. In reality, criminal intelligence is the major tool in the investigative or operational process because it describes the who, why, how, when and where issues. Although there is a lot of talk about intelligence led policing, the effective introduction of this approach still has a long way to go. By and large the police culture is more directed towards investigation and prosecution than intelligence collection, especially where such collection is not seen to contribute directly to the prosecution of a particular case.

There is also some confusion at various levels, particularly within the intelligence community, about the distinction between intelligence and evidence. At least until recently there has been a reluctance to pass on national intelligence to the police agencies, including the AFP and the ACC, on quite understandable grounds that the need to protect sources and methods—that is, the need to know—was paramount. However, it has been pointed out in the United States's 9-11 commission report that there are times when the need to know may need to be overridden by the need to share in the interests of the protection of life and property. So, although relationships between the intelligence and law enforcement communities are generally cordial and professional, there is an underlying tension between the two communities which needs to be recognised.

Intelligence in the law enforcement domain is different from that in the national security area. No law enforcement agency other than the ACC is an intelligence collector as such. With the exception of the AFP overseas liaison network, most police agencies in Australia tend to be reactive, and sharing within and between the agencies is still limited. Unlike ASIO, the ACC and most police agencies are not permitted to use the product of telephone interception or listening device operations for intelligence purposes, but strictly for evidence purposes in support of the prosecution of a specific offence. This means that a lot of criminal intelligence is simply overlooked, especially in relation to organised crime. I would liken this a bit to a ship going through the ocean. As the ship is pointing towards the target—organised crime or whatever it may be—a lot of water is displaced; lots of intelligence leads are thrown out but they are lost. That I think is something that acts against the national interest of having the best coverage of organised crime, in particular.

There are four ways in which some law enforcement intelligence improvement could be made. I will list these and I would welcome the opportunity to discuss them if you like at a later date. The first of course is human source operations, which was touched on previously; the second is undercover operations; the third is antisocial control orders; and the fourth is serious crime prevention orders.

*Where should the ACC be concentrating in the years ahead? I would have thought that it should be where the greatest damage is being done to the national interest or where the greatest harm occurs. This is not necessarily in the investigation of drug trafficking or child sexual abuse, although that may be included, but rather in areas such as serious white-collar crime and corporate crime and corruption—for example, major organised taxation evasion cases, money laundering and in the organised crime infrastructure operating in and against Australia. The ACC needs to be given the resources and capabilities to undertake this role.

CHAIR—Thank you, that was a very interesting brief summary. In your experience and your observations since you moved on from the force you said that the national criminal intelligence priorities were not able to be enforced because the various jurisdictions marched to a different tune and because of street crime et cetera. Could you give us any examples—as I said, given your experience and your observations—where you have seen the priorities set at that level but not undertaken at that level and what harm that may have effected?

Mr McFarlane—My experience is quite out of date but I would have to say that, by and large, national crime intelligence priorities are discussed at the board level and accepted as being important. Unless it directly affects the role of the individual state or territory police, it is difficult for the commissioner to justify overturning his own priorities—which he is under quite a lot of pressure from his own government and the community to adhere to. There may be times—for example, following the Port Arthur gun incident or following the 9-11 incident—where the national interest is so overwhelming that every state and territory government and police force would fall into line. But, short of something of about that level of seriousness, it is difficult to see how any of these could be anything other than advisory. Therefore, in comparison with the foreign intelligence collection priority system, the Australian Crime Commission cannot assume that people will actually make the effort to go and collect in that area.

CHAIR—Mr Gibbons has a few questions but I would just like to finish off on that area. How could law-makers like us change the act to ensure that, once the board sets these priorities, they are effected from Hobart to Karratha? Is that impossible?

Mr McFarlane—No, it is not impossible. I think an example of how it can be done was demonstrated in the counter-terrorist area. But it requires a commitment from the federal government to allocate money—money in this area does assist in persuading governments to fall into line. I am very impressed by the way in which it works in the United Kingdom. I had five years on posting in the UK, two working with the British intelligence services and three at the Australian High Commission.

The fact that the Home Office as the central authority retains the capacity to allocate up to 50 per cent of the local police budget gives it enormous power to influence the way in which that police authority and the police organisation actually operate. I think that in fact if we had something along those lines—if we could agree that the Commonwealth government would fund law enforcement to a significant extent, so that there is a financial lever as well as a moral and perhaps patriotic lever to adhere to the national interest—then there would be a much greater chance of it succeeding.

Mr GIBBONS—I was interested in your analogy of the loss of intelligence. Is all of that intelligence actually lost? Would it not be logged somewhere on the new database—for example, where there is an organisation of interest or a person of interest—so that other agencies would be able to access it? I understand that they would not be able to use it, but surely it would be very valuable if they were conducting an investigation that may be similar to the reason why that intelligence was gathered in the first place.

Mr McFarlane—It may be that since I left the AFP the recording of operations and intelligence has improved substantially, but in my time I found that a lot of the work of those operations was just lost—simply because the operations were controlled within a certain region by a certain team of people and without the actual obligation to ensure that that intelligence is passed to other people, even within their own organisation let alone to cooperating agencies, I am afraid that a lot of it is simply lost.

If there was a way that telephone interception, listening device operations and some of the other more sensitive areas could be used for intelligence recording purposes, not just for evidentiary purposes in pursuing a predicate crime, a lot of that information would not be lost. It could be stored so that you could get a better knowledge of the structure, objectives, personalities, relationships and all that sort of thing in the whole serious and organised crime environment.

Mr GIBBONS—What other legislative impediments do you see that do not help these agencies complete their task? That is obviously a legislative impediment and there must be others. What would you see as the second main impediment that prevents—

Mr McFarlane—I think the fact that there is no national criminal code means that right across the board a crime is defined differently in most of the jurisdictions. Therefore, it becomes very difficult to have uniformity in the approach to these things. I think was talking to Senator Parry earlier with regard to traffic law—even traffic law is not uniform throughout Australia. If

we could, as a nation, work towards a common criminal code at least, I think that would advance the national interest in law enforcement quite significantly. There may be other areas, but that is the one that strikes me immediately as being important.

Senator PARRY—Mr McFarlane, thank you very much for your submission. I would like to challenge a lot of it, but it is not necessarily my role to challenge your submission. You said twice in your evidence before us today that it has been some time since you were in contemporary policing and, in response to a question a moment ago, that you may not be aware of the intelligence gathering aspects of the Australia Federal Police. I respectfully suggest that you are wrong in some of your assumptions. I think the evidence that we have gathered here at different times and in other inquiries would indicate that there is a very sophisticated intelligence gathering capability within all the jurisdictions in Australia and that it is well coordinated. I would certainly challenge some of those comments. Was your main purpose in coming here today to give us your personal concerns or are they concerns from a wider perspective? I gather you are not speaking on behalf of the Defence Force Academy.

Mr McFarlane—No.

Senator PARRY—Is it simply a personal perspective? I am really keen to know what your motivation is for giving evidence here today.

Mr McFarlane—Most of my work out at the defence academy and at other universities concerns transnational crime and issues related to that—corruption and things of that sort. So I think that there is a good opportunity to talk about these things, to talk about how one could improve the coverage of these sorts of problems and the consequences of not doing anything about them. I have to say, Senator, with all respect, I differ with you on that question of the quality of intelligence over the whole law enforcement community. There is a difference between informant intelligence, which deals with investigating a particular issue, and the longer term tactical and strategic intelligence, which positions the criminal problem in the whole environment in which the nation or the state—whatever it may be—finds itself.

Senator PARRY—That does happen. Intelligence gathering does happen not simply for evidentiary purposes. It is just that how that intelligence can be used is probably an area of debate.

Mr McFarlane—I was director of intelligence in the AFP for eight years.

Senator PARRY—On the other thing you mentioned with the traffic legislation and the criminal legislation, there is a lot of sympathetic legislation in the states. The ministerial councils in various areas ensure that they do have sympathetic legislation. I think traffic is a good example. The laws are virtually uniform—there might be the odd minor exception. With your intelligence collection, have you any direct evidence that the intelligence gathering is faulty in any particular circumstance or any particular case?

Mr McFarlane—Not necessarily faulty.

Senator PARRY—Well, not utilised as fully as you think it should be utilised or gained—short of tapping everyone's phone in Australia, and I think we would have a civil liberty outcry.

Mr McFarlane—No, not at all. As I said before, the culture of policing is more towards investigation and prosecution, and the collection of intelligence that directly relates to that particular case certainly gets reasonable coverage. But trying to get a broader picture of the criminal environment to make an assessment of the damage that is being done in the various fields where that environment impacts is where I think there is difficulty.

Senator PARRY—Again, my experience and evidence collected through this committee would probably indicate the contrary. When the Bureau of Criminal Intelligence unit started up in Australia 20-odd years ago—which probably led to the Australian Crime Commission—data collection and intelligence was just dragged in. How it was handled from a collation perspective might not have been as good, but I think that it is very sophisticated now. Are there direct examples you can give us where you feel it is not as good as what I am saying it is?

Mr McFarlane—There are some 300 organised crime groups identified by the ACC, of which a smaller number are regarded as being particularly significant. It would be extremely valuable to get personality targets and the reasons why those personality targets are significant, some sort of grading of the personality targets so that they could be—

Senator PARRY—And you do not believe that is happening today?

Mr McFarlane—I do not think it is happening to the extent that it could, no. I just do not think the resources are there to do it.

Senator PARRY—Finally, you indicated that there should be targeting of white-collar crime, and I think you mentioned tax evasion. You are familiar with the Wickenby task force?

Mr McFarlane—Yes.

Senator PARRY—I think that is direct evidence that it is happening, and that is an extremely high-profile targeted investigation.

Mr McFarlane—Yes, I think that is a good thing.

Senator PARRY—You are suggesting there should be more of that?

Mr McFarlane—Yes.

Senator PARRY—You might want to provide in camera evidence or a written statement with regard to this: do you feel there is an area where the ACC has not applied where it should be applying?

Mr McFarlane—I think that the extent of white-collar crime, if I could use that broad term, is much broader than the investigation of the small number of cases for which the resources are there to investigate and prosecute. Even when prosecution occurs, although the situation emerged as being quite different in the United States, the penalties applying to various forms of white-collar crimes are much lower than those for crimes of violence. It is only in very recent years that penalties given for serious white-collar crime offences have been relatively commensurate with the offences and the damage done. In my opinion this whole area of white-

collar crime, corporate crime, corruption and things like that is very damaging to the national interest, the national economy and the national psyche. Although you could never hope to cover the whole lot, if there were room for further expansion of activities I would like to see this area expanded.

Senator PARRY—So you have a general view about expansion into this area without feeling that any direct, targeted area has been overlooked? Does that sum up what you have just said?

Mr McFarlane—Targets would be produced by ASIC and other agencies—the tax office and so on. So I think there are plenty of opportunities to produce targets, but there have to be resources commensurate to dealing with the investigation and prosecution of the more serious cases.

Senator PARRY—So you are suggesting we target an individual whether or not there may be criminal activity involved just to see if there is?

Mr McFarlane—No, there has to be an indication of criminality involved.

Senator PARRY—That is what I am asking. You are suggesting that there would be people out there who have not been targeted at all who should be?

Mr McFarlane—Yes. I do not want to go into personalities but I think that is a reasonable assumption.

Senator PARRY—Your view would be that the existing agencies are not doing that?

Mr McFarlane—My view is that the existing agencies are extremely limited in their capacity to deal with those sorts of problems.

Mr HAYES—Thank you for your submission, Mr McFarlane. I think you made the point that in terms of the role of the Commonwealth in law enforcement—and indeed you are right—criminality is not necessarily expressed in the federal Constitution. We have seen various examples where the Commonwealth has shown leadership, particularly in the establishment of the national fingerprint database and in the establishment of the national DNA database. The Commonwealth's ability to coordinate in those two instances is its ability to invest in terms of establishing those databases and having the cooperation of states and territories.

I also note the disparity in the definition of crime, and also in the admissibility of evidence, in some states. I think it is a matter of record, for instance, that in the Falconio case, whilst the DNA was collected in one state, it initially was not admissible where it was sought to be used in the case in the Northern Territory. They are all things where I think the Commonwealth does have a clear role in showing some leadership in a coordinated fashion. I also agree with your submission that there would be marked improvement if we could actually move towards a common criminal code. I note that over the last few years while I have been looking at this—probably the last 12 or so—just about all states and territories and the Commonwealth government have come to be at one, at the attorney-general level, in taking that approach, but I guess it takes a series of steps. Certainly I think that more investment in those areas would probably be of considerable assistance to law enforcement generally.

I agree with my colleague Senator Parry in that what I see at the moment in terms of contemporary criminal intelligence gathering has certainly come on significantly—far more so than when I last reviewed that in the NCA days. What now comes under the ACC has certainly developed to a very professional level and it is one that I think we rightly have confidence in. Once again, thank you for your contribution. I did appreciate it.

Mr McFarlane—With regard to your first comment about DNA, fingerprinting and, obviously, agencies like CrimTrac and AUSTRAC, I think the Commonwealth has done exceptionally well in this area, and that is the trend I would like to see develop further. AUSTRAC, for example, must be one of the most efficient and effective anti-money-laundering agencies in the world. I do not know quite as much about CrimTrac, but I think that the developments which have occurred there in the cooperation between the state and territory and federal governments in that area is the sort of model we should be looking for. As I said, I would like to see that move towards the development of a common criminal code, but I do not think we have any disagreement in general terms about what you just said.

Mr HAYES—From an operational policing perspective, using databases like CrimTrac's and applying some common databases that can be used for police in each jurisdiction goes a long way to actually help effective policing generally. So I think they are areas that we would like to see being given some priority.

Senator BARNETT—Thank you, Mr McFarlane, for your presentation today. I want to just touch on the documents *Organised crime in Australia* and *Picture of criminality in Australia*. I wonder if you have had a look at them and if you have a view as to their merits or otherwise.

Mr McFarlane—I have not seen *Picture of criminality*. I think that is a classified document. I have seen the *Organised crime* document, and I think that is a valuable document. It seems to me that it quite concisely puts into 12 or 14 pages—whatever it is—the nature of contemporary crime in a way that can be understood not only by police agencies, governments and other authorities but also by thinking members of the public, who need to know a little bit about this. I think that the drivers behind organised crime have been well spelt out; the links between crime and globalisation and those sorts of issues have been well spelt out. So from my point of view that was a good document. What it does not do, of course, is to go on at the public level to talk about exactly what sort of organised crime syndicates are of concern and why they should be of concern. I presume that would be covered in the classified version. But that is the first time that I have seen a document in Australia which has provided a good, solid foundation to a description of what is involved in serious and organised crime.

If I may just extend that a little further: going back to the mid-nineties, the old Australian Bureau of Criminal Intelligence started to produce an annual report on the Australian illicit drug situation. I remember saying at the time that I thought this was an outstanding document. And I think it was, right through. In comparison with any other country I have seen that produces an annual, simple-to-read, concise, well-illustrated and well-documented definition of the nature of the drug problem, I think that particular document was outstanding. Although the document that the ACC is producing now is not quite the same, it still produces extremely valuable information.

Senator BARNETT—I do not know if you have had a chance to look at the ACC annual report. I am looking at some of the key performance indicators. We discussed this this morning with the ACC. Do you have any concerns or otherwise regarding the results for 2006-07 in the chart on page 33 regarding drug and firearm seizures? There is a huge spike or increase in the estimated street value of drugs seized—\$1.5 billion. Proceeds of crime have gone down and tax recoveries have obviously gone down, but consistent with the 2004-05 year. Do you have any observations you want to share about that?

Mr McFarlane—I am not sufficiently close to the operation to make any proper judgements, but I would say that it must be judged not just on the actual figure but also on the quality of the operations and the nature of the targeting. In the case of firearms, is it down simply because the number of firearms that are available out there in the public area is much less than it was before? In the case of drugs, what has given rise to the sudden spike? Is it because of greater importation of amphetamines, cocaine or heroin? There are so many variables. I really am not in a position to make a proper judgement.

Senator BARNETT—Have you reviewed any of the litigation that has occurred with the ACC in terms of their powers and the use of those powers or otherwise? Are there any lessons that we can learn from that litigation in terms of policy response?

Mr McFarlane—No, not specifically. I have not looked at any of the cases themselves and I have not had a need to. I think the fact that the Crime Commission remains as a sort of standing royal commission and can exercise those powers is a genuine disincentive to serious and organised criminal identities to engage in that sort of crime. The fact that it is possible to ask some extremely direct and probing questions of people in relation to organised and serious crime is a very considerable asset as far as the national interest is concerned.

Senator BARNETT—I take your point and I would certainly agree in terms of a common criminal code or law and making that consistent throughout the nation. I think there is a general sense of understanding and agreement that that is a good way to be headed. Are there any other observations you want to make to wrap it up?

Mr McFarlane—I did mention the question of the use of telephone interception and listening device products and being able to use them legally for intelligence purposes. That would require, obviously, new legislation and getting over some significant hurdles, but I think that that is an area where an awful lot of intelligence is just lost. Of course, not every jurisdiction even has the authority to intercept telephones. I think Queensland, for example, does not have it.

Senator BARNETT—So what is your suggestion there—that there be a common sort of legislative regime applying to telecommunications intercept laws?

Mr McFarlane—There is a national act in relation to telephone interception. Yes, I would personally like to see a common system throughout all the jurisdictions.

Senator BARNETT—Do you think the national act could be extended accordingly?

Mr McFarlane—I am not sure that it comes under the act as such. I think it is a matter of intent at the state and territory level as to whether, at the political level, authority will be given to the agencies to conduct such operations.

Senator BARNETT—Why won't Queensland sign up?

Mr McFarlane—I do not know.

Senator BARNETT—You are not aware?

Mr McFarlane—No.

CHAIR—We can probably find out why Tasmania did or did not, with the amount of Tasmanians we have on this committee.

Senator BARNETT—They are very sensible, those Tasmanians.

CHAIR—As there are no further questions, we thank you very much, Mr McFarlane. It was very interesting. Good luck with your PhD.

Mr McFarlane—Thank you.

CHAIR—I also thank all the other witnesses who have given evidence today.

Committee adjourned at 3.55 pm