
COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## JOINT COMMITTEE ON THE AUSTRALIAN CRIME COMMISSION

**Reference: Legislative arrangements to outlaw serious and organised crime groups**

FRIDAY, 4 JULY 2008

PERTH

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**JOINT STATUTORY**

**COMMITTEE ON AUSTRALIAN CRIME COMMISSION**

**Friday, 4 July 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, Hutchins and Parry and Mr Gibbons, Mr Hayes, Mr Pyne and Mr Wood

**Terms of reference for the inquiry:**

To inquire into and report on:

The effectiveness of legislative efforts to disrupt and dismantle serious and organised crime groups and associations with these groups, with particular reference to:

a. international legislative arrangements developed to outlaw serious and organised crime groups and association to those groups, and the effectiveness of these arrangements;

b. the need in Australia to have legislation to outlaw specific groups known to undertake criminal activities, and membership of and association with those groups;

c. Australian legislative arrangements developed to target consorting for criminal activity and to outlaw serious and organised crime groups, and membership of and association with those groups, and the effectiveness of these arrangements;

d. the impact and consequences of legislative attempts to outlaw serious and organised crime groups, and membership of and association with these groups on:

   i. society

   ii. criminal groups and their networks

   iii. law enforcement agencies; and

   iv. the judicial/legal system

e. an assessment of how legislation which outlaws criminal groups and membership of and association with these groups might affect the functions and performance of the ACC.

**WITNESSES**

**Committee met at 11.00 am**

**CHAIR (Senator Hutchins)**—Ladies and gentlemen, I declare open this public hearing of the parliamentary Joint Committee on the Australian Crime Commission. This is the second hearing for the committee's inquiry into the legislative arrangements to outlaw serious and organised crime groups. The terms of reference are on the committee's website. The committee held its first hearing in Adelaide yesterday and will be holding additional hearings in other state capitals later in the year. The committee's proceedings today will follow the program which has been circulated.

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 a committee and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to 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 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.

Before I welcome the first witness, I remind members of the committee that the Senate has resolved that government officials should not be asked to give opinions on matters of policy and should be given a reasonable opportunity to refer questions asked of an officer to a superior officer or to a minister, if that is appropriate. This resolution does not include questions asking for explanations of policy or factual questions about when or how policies were adopted.

[11.02 am]

**ROBERTS-SMITH, the Hon. Leonard William QC, Commissioner, Corruption and Crime Commission of Western Australia**

**CHAIR**—I welcome the Commissioner of the Corruption and Crime Commission of Western Australia. I invite you to make a brief opening statement, at the conclusion of which I will invite members of the committee to ask questions.

**Mr Roberts-Smith**—Thank you for your invitation to meet with you today. I note the committee's terms of reference are limited and specific. I do not propose to address the first term of reference, which relates to international legislative arrangements, nor the third, which concerns Australian legislative arrangements to outlaw specific groups, because there are none in Western Australia. I will firstly make some brief general comments. The terms of reference are implicitly based on the assumption that serious and organised crime groups are a significant threat to society. Ample historical and empirical evidence shows that assumption to be correct. However, by their nature, the terms of reference seek to address the problem through legislation—that is, changing or creating new laws to seek to define specific groups and create offences in relation to membership and association.

In Australia most members of society abide by most laws most of the time. Legislation is most effective for those citizens who accept and conform to the rule of law. It is a generally established precept that there is a small percentage of society that commits crimes regardless of the laws. It is certainly the case that criminals involved in serious and organised crime commit crimes generally in a way to avoid detection and prosecution. Their unlawful activities involve the deliberate breaking of laws, and it can be said that they generally do not conform to the norms of society in this regard. The point to be made is that, if the targets of any proposed legislation in the terms being considered are involved in serious or organised crime, it is unlikely that they will simply comply with the new law. It is more likely that they will modify or change their conduct or methods to subvert the intention of the legislation rather than desist from their criminal activities, behaviour or associations. In particular they are likely to go underground and attempt to become less visible or even invisible. The task of law enforcement agencies would thereby be made more difficult rather than less difficult.

That leads to my second preliminary point, which is that increasingly stringent legislation alone can never be the answer. Legislative solutions need to be appropriately framed to strike cleanly, even surgically, at the criminal conduct, individuals or organisations which they are intended to affect whilst minimising the collateral effects on others. They must be crafted to produce an effective, practical result. They must be as simple as possible to understand and to put into effect and they should constitute the least interference with fundamental rights and freedoms necessary to achieve the attainment of their legislative object. I refer here of course to the principle of proportionality. But even if the legislation meets these criteria it will not work—that is to say, it will not produce the desired practical social result, unless the law enforcement agency which is responsible for administering it is given the financial and other resources to do so.

Legislation alone is not the answer, and I can draw on the experience of the Corruption and Crime Commission of Western Australia. The experience of dealing with crime matters within the commission has two components. The first is the commission's own experience of the application of the organised crime provisions of the Corruption and Crime Commission Act 2003. The second is the experience of commission officers. They include two former heads of the Perth regional office of the National Crime Authority, a number of experienced former police investigators drawn from state and federal police agencies and a number of support staff who are former officers of the Australian Crime Commission, the National Crime Authority and the New South Wales Crime Commission.

I turn to the commission's experience of the act, which gives exceptional and some of the strongest powers available to law enforcement officers. The commission commenced operations in 2004. Its main purposes, as stated at section 7A of the act, are:

(a) to combat and reduce the incidence of organised crime; and

(b) to improve continuously the integrity of, and to reduce the incidence of misconduct in, the public sector.

Whilst the commission has achieved considerable success in relation to its misconduct function pursuant to section 7A(b), the same cannot be said for its organised crime function. The current legislation limits the commission to an enabling and monitoring role should the Western Australian police make application to engage the act. As the act presently stands, the commission cannot use its powers and considerable capabilities proactively in relation to serious and organised crime.

Part 4 of the act deals with the commission's organised crime function in terms of granting and oversight of the use of exceptional powers and applications for fortification warning and removal notices. In general terms, the commissioner, on application from the Commissioner of Police, may grant the following powers to the Western Australian police for the purposes of an organised crime investigation. These are powers of search without warrant, authority to conduct control operations, authority to conduct integrity testing programs, the issue of fortification warning and removal notices, assumed identities and the power to conduct coercive hearings.

Western Australian police have made only two applications for the use of these powers. One was a fortification warning notice application made to the commission's predecessor organisation and the other relating to a coercive hearing. In both cases the outcomes were less than satisfactory to both the commission and WA police and perhaps explain in part why no further applications have been forthcoming. The point is that, in the experience of the commission, legislation that grants exceptional powers alone is not the answer. There are a number of significant deficiencies in such an approach. These relate to resourcing, training, legislative interpretation and legal challenge.

On resourcing, such special or exceptional powers will ordinarily require the provision of additional resources or infrastructure to the law enforcement agency responsible for making them work. They mostly cannot be seen simply as an add-on to traditional policing techniques. While that may seem on first blush a logical approach, the use of such powers and legislation is not simply another accoutrement for police officers or investigators.

On training, as with any new tool or power there is a need to educate and train personnel in its use. People need not only to know of its existence but also to understand how it works and to be trained and competent in their use of it. It is necessary to develop a pool of experience and expertise.

On legislative interpretation, while the provisions of the commission's act are explicit, the interpretation of the law is untested and new. The consequence is that both processes and interpretation of the statutory intent are still evolving. This lack of clarity has led to a higher degree of complexity, albeit designed to protect and guard against the improper use of the powers. One suspects that, in the minds of many, it is just too hard.

On legal challenge, the use of exceptional powers has been the subject of significant resistance and legal challenge. Two challenges to the powers have found their way to superior courts, including the High Court of Australia and the Supreme Court of Western Australia. Both have been protracted processes that challenged the validity of the laws. It could reasonably be anticipated that the laws contemplated by this review would be similarly challenged.

A statutory review of the commission's act by Gail Archer SC recommended that the commission have an investigative crime function specifically to investigate serious and organised crime. Importantly, this recommendation was based on a commission submission which was supported by the Western Australia Police Service and by recommendations of the Western Australian parliament's Joint Standing Committee on the Corruption and Crime Commission. Recommendation 5 of the committee, relevantly, was that the act be amended to enable the establishment of a reference group, comprising the Western Australian Police Commissioner and the Commissioner of the Corruption and Crime Commission, to provide bipartisan support to serious and organised crime references and to determine organised crime priorities and related terms of reference. Recommendation 6 of the committee was that the act be amended to enable the commission to have the necessary powers to conduct serious and organised crime investigations either jointly with the Western Australian police or independently, subject to bipartisan support from the reference group, and that, without limiting the circumstances in which that might apply, it would include enabling the commission to assist the Western Australian police in the conduct of crime examinations and the pursuit of serious and organised crime encountered in the course of public sector misconduct. Other recommendations would enable the pursuit of incidental and ancillary offences.

I have spent a little time elaborating on these proposed legislative changes because it is the commission's view that they will afford a powerful means of combating serious and organised crime in Western Australia without the need for legislation to outlaw specific groups or to criminalise association with members of specific groups. Significantly, too, it is reasonable to anticipate a diminished or diminishing capacity of the Australian Crime Commission to deliver support to Western Australian police in light of competing national priorities and budget pressures. The proposed state based legislation will ensure that the Corruption and Crime Commission of Western Australia will be able to support Western Australian police in meeting the serious and organised crime challenges specific to Western Australia.

Defining those groups and memberships likely to be the subject of any proposed new law is problematic. While traditional organised crime groups historically were modelled around a structure and hierarchical command and often bound by ethnic or regional ties, this is no longer

the case. The emerging paradigm is one of a loose-knit confederation of criminals that form and work together on singular enterprises that are much more flexible and adaptive, not unlike legitimate modern organisations. The exception is that of the outlaw motorcycle gangs, which are unique in their high-profile visual presence. Their criminal activities, though, are still generally clandestine in nature.

In effect, the proposed legislation would remove, it seems, certain democratic rights to do with freedom of association for a certain class of proscribed individuals or a group. Defining that group and the test for that proscription is one issue; enforcement and the proof of the fact is another. While legislation can define in words what that test is, its application in the real world would be challenging. I note the comment in the submission from the Queensland Crime and Misconduct Commission that:

> Legislation proscribing associations between certain individuals is likely to be subject to extensive legal challenge and will need a significant resource commitment by LEAs to enforce.

In Western Australia outlaw motorcycle gang criminal activity has been evident on a number of occasions where it has involved high-profile acts of violence. On two separate occasions in the past the police, in conjunction with the then National Crime Authority, mounted a multi-agency task force response. These task forces concentrated significant sustained resources on investigating the criminal activities and assets of the gangs concerned. While a number of prosecutions ensued, many failed to secure convictions. However, the intense law enforcement attention had a significant disruptive impact on the operation of the gangs.

The relative success of these initiatives can be put down to a focus of resources sustained over a significant period of time. They involved a holistic investigation plan that gathered evidence of crimes and conducted overt disruptive activities and covert operations involving surveillance, intelligence gathering and the identification and restraint or forfeiture of assets. The importance of this holistic approach is best summed up by the Crime and Misconduct Commission submission, which says:

> A successful prosecution of one, or even more members of a network, often has only a limited effect on the broader operations of the larger criminal group.

A direct consequence of this intense law enforcement activity was the collection of intelligence on, and an understanding of, their criminal activities and their method of operation. This has better informed both tactical and strategic decisions. Unfortunately, the inability to sustain this focus has enabled the gangs to rejuvenate and re-establish their presence within the criminal landscape. The significance of persistent law enforcement attention, and the disruptive effect, cannot be understated and needs to be part of the broad strategy to deal with the problem.

Many powers, both traditional and coercive, are available to law enforcement agencies under various laws. Their existence does not necessarily translate to their application. It is not simply the existence of the powers or the law that is effective but their use as part of a broader strategy. This confirms the belief that the sustained application of these resources to the problem is the most effective strategy in deterring, disrupting and discouraging organised and serious criminal activity.

This committee is determining the need to outlaw specific groups known to undertake criminal activities, and membership of and association with these groups. It is useful to start by identifying the true problem. The heart of the issue seems to be that the specific groups undertaking the criminal activities are not being detected committing those crimes and then being prosecuted. It seems that neither the individual acts of criminality nor those criminal acts that are controlled by or part of the entity are being dealt with effectively. The question then is whether this is because of a deficiency in the common law or more simply a lack of law enforcement resources to deal with the problem. The terms of reference of this inquiry do not address either of those issues.

The consideration of these new laws or powers unfortunately fails to address the shortcomings in the current legislative scheme. Many of these seem to dissipate under sustained law enforcement activity. That suggests the issue is not really about lack of powers but, rather, about the focus and resources. While additional powers can only assist law enforcement they are not the complete answer. The more fundamental question that needs to be addressed is: how significant a threat is serious and organised crime to society and what priority is this for government? We then need to determine a commensurate application of resources to address the issue.

A holistic assessment and understanding are required of serious and organised crime and its true threat. It seems evident that a large part of the solution is the increase in, and quarantining of, specific resources to deal with the problem—not simply more powers. Having the powers is one thing; using them effectively as part of a broader strategy is another. The commission does not believe that the proscription of groups and making membership or association with members of those groups an offence will be effective. The Victoria Police submission to the committee does not support the proscription of outlaw motorcycle groups, because it is disproportionate, offends human rights, is narrowly focused, will drive activities underground and will marginalise groups within the community. The commission agrees.

**CHAIR**—Thank you, Commissioner Roberts-Smith.

**Mr WOOD**—I am a bit confused, Commissioner. At the start of your opening remarks, you said that, if these laws were introduced, crime would go underground; yet, later on, you spoke about outlaw motorcycle gangs and how their criminal activities are clandestine in nature—and that, to me, means underground. Can you explain the difference?

**Mr Roberts-Smith**—Outlaw motorcycle gangs in particular, as I think I observed in my opening remarks, ordinarily have high visibility in terms of our being able to see them riding their bikes, wearing their leathers and colours and so on. So they are physically in view. To that extent, it would not be difficult for law enforcement agencies, as they do now, to identify individual members and people who associate with them. Police routinely follow outlaw motorcycle gangs on their rides, for example, and conduct surveillance of them. Their criminal activities, on the other hand, are of course done covertly, because naturally enough they seek not to be discovered committing offences, and so that is an ordinary part of law enforcement surveillance activity. My point is that you know broadly who they are, particularly in the case of outlaw motorcycle gangs. If one were to introduce legislation which banned such groups and banned people from associating with them, I would anticipate that the groups themselves would certainly not be visibly present around the place.

**Mr WOOD**—On that point, the police are already saying that the criminal activities of these gangs are underground. Obviously, if they were open about dealing in drugs they would simply be arrested; therefore, the criminal nature of their activities is already underground. The South Australia Police said in their submission that their biggest problem is the association and structure of a gang, whereby the brand name is basically used as a tool for intimidation. They propose that this legislation will forcibly break up the association and the brand name of a group, which will lessen the current impact that is having on serious crime. Individuals can still commit serious crime but the group brand name would not be behind them.

**Mr Roberts-Smith**—I would expect that the brand name would not disappear and that the threat would not disappear. For example, it would be made very obvious to those who were being intimidated by whom they were being intimidated and for what purpose and what the consequences would be if they failed to act in the way they were being sought to act. I take the point: there would be less of a physical public appearance, if you like. I suppose one might compare it, in a sense, with the Mafia in America, particularly in its early days. One knew one was dealing with an organisation, even though it might not have been physically identifiable on the street.

**Mr WOOD**—On another point: you spoke about resources. Obviously, resources are required in surveillance. The resources required to watch one person for one day could involve 16 to 20 police officers. In Western Australia, for example, if they were to look at this issue seriously, they would require a huge increase in police resources. Would you agree with that assumption?

**Mr Roberts-Smith**—If what happened?

**Mr WOOD**—I will give you an example. I will go back to my days in the Victoria Police: for one person to be under surveillance for one 24-hour period, 16 police officers would be required to watch them. Therefore, if, at one time, you were going to target a lot of people who were suspected of being involved in a criminal activity, significant resources for surveillance would be required. The Western Australia police, for instance, would have to greatly increase their surveillance capacity. Would you agree with that?

**Mr Roberts-Smith**—Surveillance can certainly be very resource intensive—there is no difficulty with that—but of course it also involves the use of a lot of technical resources. There are various ways of doing these things. I am not sure where the question is directed. It seems to me that, if you are talking about legislation designed to break up gangs, at least publicly you are going to be increasing the need for surveillance because those gangs are going to be more covert and you are going to have to go underground to find them, which involves more surveillance. The point about being able to identify groups at the moment is that at least you have a place to start with your surveillance. You start by looking at the people you know about and, depending upon the sort of surveillance they are under, you can establish the links they have with people whom you perhaps did not know about. But, if you cannot find them in the first place, then you are going to have a problem.

**Mr WOOD**—At the same time, if you have a criminal investigation, the police are going to know their targets. If they have a person under surveillance who is in an outlaw motorcycle gang, whether they have their colours on or are walking down the street in a suit, the police are obviously going to know who their target is. You are proposing that it is going to go

underground. But, as far as I am concerned, it is already underground. We are hearing law enforcement agencies, particularly from South Australia, openly saying that the number of people joining these gangs is increasing, the amount of crime is increasing, the intimidation is increasing and the current legislative framework is not working. Why? Because witnesses are being intimidated, and so matters are not getting to court in the first place. Agencies are saying that their hands are pretty much tied and that they need to go to the next level. On the other hand, you are saying that, if you increase the resources, you can have the same impact. But to get that same effect would require a great deal of expenditure.

**Mr Roberts-Smith**—Could I make this point: it seems to me that governments are going to have to increase the resources anyway, whichever model is used. The South Australian legislation model to conduct the investigations and to implement the laws will require additional resources. The point I am making is that, whether one is talking about these laws or any existing law enforcement powers in legislation, the key to effective law enforcement is giving the law enforcement agencies the resources to actually apply the powers. It does not matter whether we are talking about serious and organised crime specific legislation to ban the groups; the law enforcement agencies are still going to want to conduct surveillance, get into the groups, mount operations and do all the rest of it. That is going to take money and resources. All I am saying is that, if the money and resources were put into the application of existing legislative powers, we would be getting a lot better results than we possibly are at the moment.

**Mr HAYES**—It seems to me from your initial statement that you went very close to making the case that we should be extending the powers of the ACC as opposed to taking a greater interest in the investigative capacity of the CCC here in Western Australia. I would like to know why the coercive powers of the CCC have not been used in serious and organised crime, which it was designed to do. That is part of the objects of the act. Why hasn't that occurred, and why has the CCC concentrated largely on public sector activity?

**Mr Roberts-Smith**—The short answer to that point is that, as I made clear in my opening remarks, the commission, under the legislation as it stands, has no power to proactively investigate organised crime. We cannot do it ourselves. All that can be done under the existing legislation is for the commission, or the commissioner acting as the commission, to approve an application by the Commissioner of Police to give the police those exceptional powers, which they then use. The commission monitors the exercise of those powers. That is the full extent of the legislative role of the commission. If the question is, why haven't they been used, the question really should be: why haven't the police made application to the commission for the use of those powers? And that is a matter for the police. We cannot do it ourselves. We can only give it to the police on their application.

**Mr HAYES**—Having said that—and I accept what you say—I do know that the Western Australian police have extensively used the coercive authorities of the ACC, with their examiners, in developing evidence in ongoing investigations. If you have the powers, why hasn't the Corruption and Crime Commission been utilised instead of the ACC? Is there an issue between the WA Police and your organisation?

**Mr Roberts-Smith**—Not as far as I am aware. A suggestion was put to me some time ago—not officially—that Western Australia Police, or at least some of its members, were of the understanding that, if they sought to use our coercive hearing powers, any product and perhaps

even information obtained through the use of our other powers might be subject to disclosure to the defence in subsequent criminal prosecutions. They were seeking to avoid that outcome. I did not understand that then and I still do not.

**Mr HAYES**—That is a matter of law, essentially.

**Mr Roberts-Smith**—It is a matter of law, but my understanding is that the same thing applies with the ACC. I have had discussions with the ACC about that and it has been confirmed: in terms of criminal prosecutions, they are subject, quite naturally, to the same disclosure regimes as we are. But, beyond that, I think you would have to ask the police why they have not sought to use the powers. However, as far as I am aware, there is certainly no issue between the police and the commission in terms of whether we would do it with them, for example. If there is an apprehension, I think it is a view on their part that perhaps it does not work for some reason.

**Mr HAYES**—It is just that it is a homegrown jurisdiction and one that has near identical powers in being able to use coercive means for gathering material. We are very keen to know why it has not been used. But I take your point that this might be a case for those who actually request the use of it.

**Mr Roberts-Smith**—Yes. I can say this: since my appointment 12 months ago, I have been asking myself the same question and I have had discussions with the commissioner of police and other officers. Notwithstanding an apparent perception that there are some difficulties in the use of the powers under our act, they and we have agreed to use our best endeavours to make them work. I can say that I am presently considering an application which the police have made, following discussions between the commissioner and me, and I anticipate that we will be dealing with that application imminently. But, for obvious reasons, I do not want to say much more about that.

**Mr HAYES**—As I understand it, both you and the commissioner of police sit on the reference group, so the two of you will determine whether the Corruption and Crime Commission will be engaged to use its powers of investigation.

**Mr Roberts-Smith**—Yes, that is correct.

**Mr HAYES**—So it is not a very wide-ranging group and I would think that is something that, between two people, you could get an understanding of reasonably quickly.

**Mr Roberts-Smith**—Yes, absolutely. Both the commissioner of police and I put that model forward originally to the joint standing committee and again to Gail Archer in her review. It is the model we support. It is based on other arrangements within the Australian Federal Police and other agencies. However, I see no difficulty in making that work at all and neither does the commissioner of police. We are quite confident that that will work.

**Mr HAYES**—As you know, our reference is to address serious and organised crime. We are keen to hear from practitioners in those jurisdictions about the best contemporary methods used for addressing issues of serious organised crime. That is, I suppose, an extraordinary aspect. It is not domestic crime or matters that ordinarily come before domestic or community policing. Can

you tell us of the importance, as you see it, of the use of coercive powers in addressing both the investigation and the detection of issues of serious and organised crime?

**Mr Roberts-Smith**—I think they are particularly important. I think they give law enforcement agencies an opportunity to, if you like, break the code of silence, or whatever you want to call it, and get into an organisation that you cannot get into really in any other investigative way. I think they are absolutely critical. But I would make the point that, in using them, a degree of sophistication is required. You cannot simply use those powers as a stand-alone. You need to prepare for them by other investigative means, and they come at the stage of an investigation where you have a lot of other material that you can then bring to bear in the course of the coercive hearing. In addition, I think implicit in your question is the opportunity that the coercive hearings afford to obtain witnesses who would not otherwise be giving evidence, which leads into notions of witness protection and so forth. So they are all related. However, the short answer to the question is that I think they are absolutely fundamental.

**Mr HAYES**—So there is a balance in setting aside the liberties of individuals in terms of gaining that degree of intelligence for criminal investigations?

**Mr Roberts-Smith**—Yes.

**Mr HAYES**—What sorts of checks and balances apply in your organisations regarding an organisation that does have these extraordinary powers, such as coercive questioning and evidence gathering procedures? What sorts of checks apply within the Corruption and Crime Commission?

**Mr Roberts-Smith**—I should emphasise first that, at the moment, we are talking about the exercise of the powers by the commission in its misconduct function, because currently we do not have, as I have said, any power to investigate serious and organised crime. We are not talking, therefore, about the exceptional powers, which are part 4 of the act, which the commission would give to the police.

The protections and safeguards in the Corruption and Crime Commission Act, first of all, include obviously all of those that apply to the sorts of tools that we are using. For example, if we are using telephone interceptions, as you all know, that is subject to a Commonwealth legislative regime and we have to comply with that regime. We have to get the warrant from a federal judicial officer; it is valid for only a limited period of time; it has to be renewed, if it is to be extended—and all of those things which are involved in the Commonwealth legislation. Also, as part of that scheme, our operations in relation to telephone interceptions, for example, are monitored by the Commonwealth Ombudsman, who gets the state Ombudsman to do that on his behalf.

For surveillance devices, which come under state legislation, there is a similar sort of process. Surveillance device applications have to be made to a judge of the Supreme Court and, therefore, supported by affidavit. They apply for only a limited time and are subject to such restrictions or constraints as the judge may impose. In addition, we are subject to audit by the Parliamentary Inspector of the Corruption and Crime Commission, as we are with all other aspects of our operations, except for telephone interception material—but even then we are subject to his review, if he is conducting an actual inquiry.

**Mr HAYES**—The Western Australia Police are subject to the integrity regime of your organisation.

**Mr Roberts-Smith**—Yes.

**Mr HAYES**—I am just curious: what happens in a joint operation between the Corruption and Crime Commission and the Western Australia Police? Who is responsible for the overall integrity of that operation?

**Mr Roberts-Smith**—We do work with the Western Australia Police in a number of ways. At present, one is that, in relation to a misconduct investigation, we might, for example, refer it to them to be conducted jointly by them and the commission, we might refer it to them to be conducted completely by them and we would then monitor it and review it at the end or we may do it ourselves. If we were working jointly with the WA Police, we would not mix teams, if you like; we would retain our organisational and institutional integrity. We might do one aspect. For example, we might work with the police on an investigation that involved both misconduct by public officers—which we would need for jurisdiction—and criminal offences. We would agree to run it on the basis that they would investigate the crime aspect of it and we would deal with the public officers' side of it. We would simply pool the information and deal with it that way. We have had no difficulty at all running operations like that with them so far. That is the sort of model, in broad terms, that Commissioner O'Callaghan and I have agreed to operate under the proposed new legislative regime.

**Mr HAYES**—The Australian Crime Commission has very similar powers and coercive jurisdiction in its own right. It has its integrity oversighted by the Australian Commission for Law Enforcement Integrity. I know the New South Wales Independent Commission against Corruption does not have a similar oversight. At the moment, I think, it is only oversighted by the state parliament or by annual report. If you are going to run joint operations, the Western Australian component of it is oversighted by the Corruption and Crime Commission. I am just wondering about the other, stand-alone component, which has all these extraordinary powers. Are there built-in checks and balances?

**Mr Roberts-Smith**—You mean the police?

**Mr HAYES**—No, the Corruption and Crime Commission itself.

**Mr Roberts-Smith**—Let me go back to your previous question. The essential accountability regime for our commission is that the commissioner is a parliamentary officer and the commission is an instrument of the parliament. There is a parliamentary Joint Standing Committee on the Corruption and Crime Commission, and we are accountable to that committee. We meet with that committee at least four times a year, and they can ask whatever they want to ask about the activities of the commission. They tend, obviously, to stay away from actual operations.

I mentioned the parliamentary inspector. He is another statutory officer and officer of the parliament. His role, under our act, is to audit and monitor the activities and operations of the commission. He has complete access to everything we do, including operations, and he can report back to the parliamentary committee or, indeed, directly to the parliament and have his

reports tabled in the parliament. That is the immediate accountability regime. The New South Wales Crime Commission, as I understand it, do not have oversight by a parliamentary committee. They might report to the parliament, but I do not think they actually have oversight. But this committee is specifically created under our legislation.

**Mr HAYES**—I think you would agree that a degree of integrity oversight is very important for an organisation that has extraordinary powers.

**Mr Roberts-Smith**—Absolutely. I would unequivocally say that it is absolutely fundamental for organisations such as the Corruption and Crime Commission to be accountable in those ways.

**Mr PYNE**—You have made it very clear in your evidence that you think the South Australian legislation is going too far, if I can interpret what you said. I think you said particularly that, without the need to criminalise specific groups or association with specific groups, much of the work of the police could be done. Much of your evidence correlates with the evidence of the Law Society of South Australia, which we took yesterday in South Australia. There are two issues I would like to raise that were raised with the Law Society yesterday. First, have you considered the constitutionality of the South Australian legislation under the Constitution of Australia? There were issues to do with freedom of association and there have been cases in the past about freedom of speech, which the Law Society said were not germane to the constitutionality of the state legislation, but they did think that there would be a challenge which would be successful under the judiciary sections of the Australian Constitution. I wonder if you would like to comment on the constitutionality of that section of the South Australian legislation that is to be proclaimed on 1 August.

**Mr Roberts-Smith**—Not specifically. I have not looked at the South Australian legislation from that point of view or, indeed, at all in any particular detail. I am obviously aware of its broad implications and the sort of debate there has been about it. But I would certainly agree, simply because of the nature of that legislation and quite apart from any of the specific provisions, that it is virtually inevitable that there will be serious legal and constitutional challenges to it or to other similar legislation. That is one of the problems that I flagged in my introductory remarks.

Legislation of this kind does, on the face of it, interfere significantly with fundamental rights and freedoms. It may be that, in certain circumstances, legislation of that kind is indeed justified to deal with the serious problem society has in that particular area. That comes back to the proposition about proportionality and necessity. Whatever view one may take about specific legislation there, for those very reasons one can guarantee it is going to be subject to significant legal challenge.

**Mr PYNE**—I am not here to argue either for or against the South Australian legislation. The only point I would make in relation to that is that the experience South Australia has had with organised motorcycle gangs in recent years means the police and the government think it is a proportionate response. Having listened to the police this morning, I do not think the situation in Western Australia is yet the same as the situation in South Australia, but I think that the way things are developing in South Australia is a harbinger of things to come. I note that South Australia used to be your state. In fact, we both went to St Ignatius in Adelaide.

**CHAIR**—It has a lot to answer for!

**Mr PYNE**—In fact, the St Ignatius community is almost as tight as an organised motorcycle gang!

**Mr Roberts-Smith**—I hope it will not be proscribed by the legislation!

**Mr PYNE**—You never know in South Australia! The Law Society raised a second issue which is particularly relevant to your role, Mr Roberts-Smith. They noted the enormous change in people's individual rights and liberties through the legislation to be proclaimed on 1 August. They also noted that there is no independent commission against corruption in South Australia that looks into the role of public officials or, indeed, the police. Their concern was that this extremely far reaching and virtually unappealable power in the hands of the Attorney-General and the police commissioner in South Australia, while it changes entirely the dynamic of people's freedoms in a liberal democracy, was not being matched by any oversight of public officials or the police. If the police and the government want to go down the track they have gone down in South Australia, do you think they should be introducing a corruption commission not dissimilar to your own or others around Australia in order to balance out the role of public officials and the police with alleged criminals?

**Mr Roberts-Smith**—I would not comment on it in that way. Juxtaposing the new legislation and the proposition that there should be a commission such as the Corruption and Crime Commission: quite obviously, given the position I hold, I would say that every state should have a corruption and crime commission or its equivalent.

**Senator PARRY**—If the South Australian legislation does become successful and we see outlaw motorcycle gangs wishing to leave South Australia because of the unworkability of their activities, do you think we would need to see harmonised legislation around Australia to ensure that the weaker states were not then subject to the harbouring of an additional proportion of outlaw motorcycle gangs?

**Mr Roberts-Smith**—If that consequence were to eventuate then that proposition would need to be examined.

**Senator PARRY**—Yes; especially where there is a border shared with South Australia.

**Mr Roberts-Smith**—Yes. One can certainly readily accept the principle that, in a federated country such as Australia, it is desirable in these areas to have laws which are consistent across jurisdictions so that one avoids the problem of simply driving the activity into some other Australian jurisdiction. One could readily accept that principle.

**Senator PARRY**—That could potentially be the outcome if it is successful—and that is the great 'if'.

**Mr Roberts-Smith**—That is quite right. It is the great 'if'. No doubt that is the intent of the legislation, but whether that eventuates remains to be seen.

**Senator PARRY**—We have been given information that some operatives in South Australia are already looking at relocating—not necessarily to WA. You mentioned in your opening statement the fortification issue that is before the courts, and we have heard that that has been a lengthy process. You did not mention the coercive hearing, which you said was also a failure, or words to that effect. Could you explain what happened with the coercive hearing matter.

**Mr Roberts-Smith**—Yes. This was before my time as commissioner, so I am speaking from my understanding of what happened then. The situation was that there was a private hearing involving some individuals who had been involved in a shooting in a nightclub. Some of their activities were caught on video, so one could see who had a gun and that kind of thing. They gave evidence. Those involved basically said, 'I can't remember.' They were cited for contempt by the then commissioner, and it went to the Supreme Court. I think the Court of Appeal concluded—after quite a long period of time, I might say—that the contempt charge had not been made out on the evidence that was before the court. That was obviously an unsatisfactory result for everybody, not least because it took so long. Certainly my view, and I think the recognised view, in this area is that if a commission of this kind is to have effective coercive hearings then those who are thought to be lying or committing a contempt of the commission must be capable of being dealt with quickly rather than months or even years later. But, again, my understanding is that there were probably a number of reasons why that took so long to get to that point.

**Senator PARRY**—There has been a significant suite of amendments to the original act. Do you feel as though the legislation is still deficient and needs beefing up even further to assist it, and that maybe we will then see an increase in applications from the Commissioner of Police?

**Mr Roberts-Smith**—I do not know about part 4, the part of the legislation that gives exceptional powers to the police. As I indicated in response to an earlier question, the present Commissioner of Police and I are trying to make that work at the moment, so we will see how that goes.

**Senator PARRY**—So you feel as though that aspect and part 4 are okay and that there is no issue with part 4?

**Mr Roberts-Smith**—The point is that part 4 is there, and we have sought a raft of amendments. A whole lot of suggested or recommended amendments came out of the review by Gail Archer SC. I think there were 54 of those, of which there are about 50 that the government has indicated that it accepts, and there is bipartisan support for those. A lot of those will change things quite considerably. They include, as I indicated, the ability of the commission to actually investigate organised crime itself under this reference group. That will make a big difference.

**Senator BARNETT**—Mr Pyne has asked many of the questions that I was hoping you would respond to with regard to South Australia's far-reaching legislation, but I want to ask you about the legislation before the Western Australian parliament—I understand that it is still before the parliament—with respect to expanding the powers to permit your commission to conduct organised crime investigations in joint task force arrangements with Western Australian police. What is the status of that proposal, and what is your response to that proposal?

**Mr Roberts-Smith**—I think you are talking about the review that was conducted by Gail Archer. That was a three-yearly review which was mandated by the act itself. The act required the legislation to be reviewed after it had been in operation three years. By the time the report was tabled, we had been in operation four years. As I said, Gail Archer made a number of recommendations, most significantly about the serious and organised crime reference group and the ability of the commission to conduct investigations under that. As I have just indicated, most of those recommendations have bipartisan support. The legislation—unfortunately, from our point of view—is actually not before parliament yet because it is still in the predrafting discussion stage, but the government has working groups operating at the moment to formulate drafting instructions and the legislation itself. But it is intended to implement those recommendations, and the commission is looking forward to them being implemented. We think that will improve the situation considerably.

**Senator BARNETT**—It has been suggested that there has been a need for this legislation to outlaw motorcycle gangs and that that has been exaggerated. Do you have an observation on whether that is the case in Western Australia and do you believe there has been growth in motorcycle gangs and their membership and a corresponding increase in criminal activity flowing from that? Certainly that was the evidence put to us in South Australia by the police and others and of course that is one of the reasons why they proceeded with their far-reaching legislation. Do you have an estimate of the level of concern and activity here in Western Australia?

**Mr Roberts-Smith**—Obviously, because we are not actually involved in the investigation of serious and organised crime at the moment, the commission itself has no empirical experience of that, but in a general sense I am broadly aware. Obviously we have an interest in that, not least of all because of any potential interface with misconduct by public officers. Putting it in broad terms, whilst there is obviously a problem to an extent in Western Australia, from the material I have seen I would not think it is anything like the problem that has been presented as existing in South Australia, for example. But, again, I would defer to the Commissioner of Police on this. They deal with this on a day-to-day basis, so that would be a far better source of information for the committee.

**Senator BARNETT**—Finally, you indicated in your opening remarks that you are not supportive of South Australia's legislative approach. Is that primarily because of the impact on the breach of civil liberties and individual rights? Is that the main reason for your concerns in that regard? Can you outline the reasons for your concerns?

**Mr Roberts-Smith**—That is certainly a major concern, but I think there are very practical concerns as well, for the sorts of reasons which I have given. Legislation of that kind will invariably be quite complex. The starting point is that, because of its impact on fundamental freedoms and human rights, there will be the legal and constitutional challenges we were talking about earlier, so there is that component as well. Then there is the complexity of the legislation itself. It is one thing to put in a law a definition of organised crime or groups which one can use as the foundation of jurisdiction—that, indeed, is the method that the legislation that is contemplated for our commission will be adopting to define our jurisdiction or the jurisdiction of the reference group by a definition of serious and organised crime. To have such a definition as the basis of jurisdiction is one thing; to have such a definition as the basis of criminal conduct, criminalising membership of such an organisation or a range of organisations, or association of

people with organisations of that kind, I think is a much more difficult and fraught problem because you are talking then about criminal offences, the prosecution of criminal offences, what you have to prove and the difficulties of proof.

You are also talking about the vagueness and ambiguities which will again, I would suggest, invariably be associated with creating offences involving an association of people, quite apart from the civil liberties side of it. From a purely practical point of view, there will be definitional problems. Who is included? Who is not? How do you prove their association? How do you prove participation? What are you proving participation in—membership of a group, the conduct of criminal enterprises or what? All of these are very vexed questions which are actually quite difficult, I would suggest, to deal with in framing legislation.

And then, if the purpose is to deal with serious and organised crime, how does one deal with those groups which are randomly formed for the commission of the offence, or groups which briefly deal with other groups for a particular criminal enterprise? I think the complexities of trying to cast laws around criminalising conduct of that kind are very great.

And there are other objections to it. Laws of that kind, because of their potential ambiguity and potential width, suffer from two main difficulties. They are open to abuse by the executive, including police and investigative agencies generally—and one sees that reflected in a number of the submissions which are already before this committee—for example, the experience in Queensland before the Fitzgerald royal commission and so on. Reference has been made to that sort of thing. It is also likely to produce gross injustice if the legislation is expressed widely enough to catch all of the people that those framing it might want to catch, and then it is potentially going to catch a lot of other people who are not actually doing anything that is otherwise criminal. For either or both of those reasons I would suggest that, if they do have those effects, such laws are likely to engender community opposition, if not hostility and, indeed, potentially defiance. I would suggest that what that would amount to in due course is that they will be socially counterproductive and potentially politically unacceptable anyway. So there is a whole range of different considerations which come from the notion of trying to enact laws which have the incredible breadth of the sorts of laws we are inevitably talking about here, combined with the very significant extent to which they would be otherwise infringing on civil liberties and human rights.

**CHAIR**—Thank you, Commissioner.

**Proceedings suspended from 12.02 pm to 1.29 pm**

**TROWELL, Mr Mark Terence, QC, Private capacity**

**CHAIR**—Welcome. In what capacity do you appear today?

**Mr Trowell**—I appear, I assume, in a private capacity in relation to the review that I undertook in relation to provisions of the Australian Crime Commission Act.

**CHAIR**—I invite you to make a short opening statement, at the conclusion of which members of the committee will ask you questions.

**Mr Trowell**—Thank you. I think it is timely that I appear before the committee, first of all, because I understand that the Australian Crime Commission will very soon be engaging in substantial investigations in relation to outlaw motorcycle gangs or organised crime and its varying features and, secondly, to be questioned in relation to my report, which I believe has been tabled in parliament. There are aspects of it which I think this committee has in the past carefully considered, although there was a period when I think we drifted away—particularly the contempt powers; I think they need to be focused on, if the ACC is to function effectively. I think they are the two reasons that there is some relevance to me appearing today—I assume that they are the reasons, at least.

Would you like me just to comment briefly in relation to the report? You will notice that the National Crime Authority Legislation Amendment Act 2001 gave the ACC various coercive powers, subject to being reviewed within a period of five years. The committee gave its endorsement to the amendments subject to that taking place, and that is what occurred. Also, attached to the terms of reference was some inquiry as to the state of penalties being imposed for non-compliance with the various provisions of the act, and the whole issue of contempt was revisited as well, which was timely because it has been the subject of a lot of discussion of this committee over the last six, seven or eight years. Of importance also was whether, in the granting of these coercive powers to the ACC, it could be said that there had been any misuse of the coercive powers that had been given to it and particularly any unjustifiable prejudice resulting to people called before an examiner.

My conclusions were that the amendments removing the reasonable excuse defence and derivative immunity defence had effectively facilitated the performance of the ACC in the discharge of its functions. Secondly, there was no evidence of misuse or overuse of these coercive powers, nor was there any evidence of unjustifiable prejudice resulting to any persons who had appeared before examiners and who had invoked those powers as part of the examination process. Statistically, there was some difficulty in gauging whether the courts had increased their penalties for persons who had failed to comply with the act, but it seemed to be that generally the courts were imposing greater penalties. Whether they have had sufficient deterrent effect, like all penalties imposed in legislation, is a matter of conjecture, I suppose. Finally—and this was a firm recommendation on my part, or at least a firm finding—the ACC should be given the power to certify a person appearing before it as being in contempt rather than exercising it itself as if it were a court, certifying and referring it to a judge of a superior court—a state supreme court or the Federal Court—which, I have suggested, should take more of an active role in dealing with issues arising under this legislation. I think in the past it has

been seen to be sidestepping that to a degree, and the state supreme courts have not been too enthusiastic about dealing with these issues.

My recommendations are contained in the report. If you will forgive me, it has been some time since I wrote this—perhaps I could refresh my memory. One of the issues that arose was whether there was an unfairness resulting to persons who were examined before an examiner and asked about charges that had already been preferred against them or, indeed, if there had been any confiscation proceedings against them. The suggestion was that that was really a device by which you could obtain what you normally could not obtain through due process, either by a police investigation or by prosecution. After witnessing at least one examination—and I have been counsel for persons appearing before an examiner—I concluded that the ACC or an examiner should set down some formal guidelines, or be guided by them at least, in how they should approach that. It seemed to me that all the examiners dealt with them in a proper and efficient way and not in a coercive or unduly coercive way. That was the first recommendation—that there be some formal guidelines with the protocols for examining persons also charged with criminal offences or subject to confiscation proceedings. The ACC wanted something less than that, but I think it is such an important issue that there should be some justification for exercising the power in those circumstances and it should be explained to the person what is actually taking place.

My second recommendation was that the procedure for dealing with contempt should be modified. The third recommendation was in line with the development of a contempt referral power, if you will. There was some confusion. With regard to a contempt power, I saw, as I read some of the submissions made to this committee over the years and certainly in discussions taking place between its various members, that there seemed to be the view that, 'Oh well, the ACC is obtaining a contempt power,' which is a power traditionally exercised by a court of law, and there were constitutional issues about whether the ACC could do that and whether it was appropriate that it do that. I can assure you that the ACC, in my discussions with the various officers, was not keen to take on the power of citing persons appearing before it for contempt; they simply wanted a referral power. I thought that was a much better preference.

**Mr HAYES**—The contempt power has never been sought really, has it?

**Mr Trowell**—No, it has not really; that is exactly right. The downside of an examiner exercising contempt powers, if indeed it were constitutionally possible, is that it can simply be used as another device by people appearing before an examiner to delay proceedings—appeal against any contempt decisions made, appeal against them to delay matters—and then you would need some structure within the ACC in order that there be some prosecution in relation to that. They do not have enough staff members to do that; they would need specialist staff members. It is much easier simply to cite a person for contempt, and I have set out some formal procedure where that can take place—telling the person, giving them the certificate, which commences the prosecution, if you will, or commissions the referral to a judge of a superior court and giving them information upon which that is based. I have set that out there and I do not think I need to go through that in any detail. Clearly, if you were to give this contempt referral power to the ACC, you should not been able to prosecute someone for contempt and at the same time prosecute them for an offence under the act itself. That is double jeopardy and that should not take place.

**Senator PARRY**—There is still going to be a time line, isn't there? Will there still be a delaying tactic that can be employed?

**Mr Trowell**—The real problem here is that the ACC is supposed to be the premier organisation of this type and I think clearly it is. It does not seem to be plagued by some of the problems that have been encountered by some of the state anticorruption bodies. But what it does not have is the range of powers that these state bodies exercise. In particular, I am sure that is why they were given the coercive powers in 2001. Quite sensibly, they were given on a temporary basis—that is, subject to their review, to see whether, firstly, they were effective and, secondly, whether any undue prejudice had resulted from their exercise. My conclusion is that neither of those things has occurred.

But the reality is this: lawyers are very adept at using any process to delay matters. Judges generally seem to be reluctant to accept that there should be bodies other than established courts exercising these types of powers—that is, powers that the courts themselves do not have—and they are very suspect about the use of these powers. I had an extensive conversation with Commissioner Kevin Hammond, who was the former predecessor to Mr Roberts-Smith of the CCC in this state. They had commenced a referral for a prosecution for contempt—in fact, it was a prosecution for contempt—and it took eight months to get before the Court of Appeal. The court was reluctant to deal with the matter. It did not see it as a priority. It seemed to demonstrate no understanding of the actual process involved for an investigative, intelligence-gathering body like the ACC. It really said, 'Look, we'll just get around to that when we can.' That is the problem. You get people appearing before an ACC examiner and that person thinks, 'Right, I don't want to cooperate here, so what I'm going to do is provoke an offence and refuse to cooperate; I'm either not going to turn up or not bring documents before the examiner.'

So the examiner then says, 'All right, we'll commence a prosecution.' It is referred to the DPP. I cannot speak for all DPPs around Australia, but the DPP in Western Australian have a lot of administrative and staff problems. They will not give priority to, say, a prosecution brought under this act. They simply will not do it. They have a murder on their hands or they have civil disobedience in relation to matters that may, I suppose, figure more prominently in the media. They give priority to various cases and they are not going to give priority to a matter of someone, for example, refusing to come before an examiner and not bringing documents. So that goes on the backburner.

Then I think the statistics support the fact that you are looking at 12 to 18 months at least before someone appears in a court, if the DPP gets around to doing anything about it. If they want to get rid of something, they just say, 'Well, there's no public interest in this. The investigation's over. What's the point in prosecuting someone? They've suffered enough'—that seems to be in vogue in this state at the moment—'therefore, we won't commence the prosecution.' By doing that, the ACC, for example, has lost staff who were involved in the investigation and the investigation is probably over. By that stage, the people under investigation have had more than enough time to organise their affairs so as to defeat the inquiry. There are a whole range of factors that apply. As happened in, I think, Hammond and Aboudi, a case referred to in my report, eight months down the track the whole sting was gone; it just ran out of steam. These are people who went before the commissioner and said, 'Look, I was too drunk on the night; I can't remember what happened.' This was a stabbing and a shooting in a nightclub in Perth. They suddenly lost their memory when they appeared before the commissioner. But the

security tapes of the nightclub convinced the commissioner that they were not so intoxicated that they could not recall what had taken place. It was simply what we call a 'constructive refusal'—that is, 'I just can't remember.'

**Mr HAYES**—Did you compare the application of other coercive jurisdictions? What comes to mind quickly in New South Wales is ICAC as well as the New South Wales corruption commission and the Police Integrity Commission. They have a different regime when it comes to exercising contempt related matters.

**Mr Trowell**—In Victoria, which I think seems to be the ideal model, there is an established liaison between the courts and the Office of Police Integrity, where the chief justice there has been persuaded to give priority to any contempt proceedings issuing from the OPI and appoints a judge who is familiar with the legislation and understands the purpose and the reason for it. That is expedited. I think Mr Duncan Kerr, many years ago, suggested that there should be this type of liaison between the federal courts. But it really has not happened. One of the problems is educating judges, if that is at all possible, to take into account the purpose of the legislation and why it is necessary for courts to respond quickly and efficiently in dealing with it.

**Mr HAYES**—Over 18 months a significant crime investigation would probably see the trail go cold. One solid way of defeating that would be simply not to cooperate with the exercise of coercive questioning or examination.

**Mr Trowell**—Or not even fabricate; just defy it deliberately. I have spoken to the examiners at length about this. This happens very rarely. The examiners are very adept at not provoking confrontation and trying to resolve it through discussion by saying, 'Look, you know what's going to happen. Let's try and do this the easy way'—just use their skill and experience in dealing with people like that. You will always have a group of individuals who will not be persuaded whatever you do. You could threaten them with 20 years in prison and I do not think it is going to make any difference at all. But, if you have something that you can invoke quickly and effectively and say, 'Right, if you're not going to cooperate, if you're going to take this view, I'm going to cite you for contempt. I'm going to refer it to a judge and you can explain it to the judge,' then the people see that something is actually being done—that the examiner has some power to deal with the matter in a proximate way and efficiently rather than just saying, 'Well, I can worry about this in 12 to 18 months time.' By then the sting has gone. It is just pointless. They will give up—and invariably that happens, or the penalty is so low that the risk is worth taking. It is worth you defying the organisation to get fined $2,000. That is small change if you are dealing with organised crime. It is a risk that they are prepared to take; it is something that they are prepared to do.

**Mr HAYES**—You have made some well-documented comments about the Corruption and Crime Commission, particularly in relation to its ability to be involved in crime investigations in this state. Can you tell us a little about your concerns in that respect?

**Mr Trowell**—I think I was asked whether there was a difficulty between the CCC and the police—that is, some difficulty in terms of whether they could cooperate properly on an investigation. There seems to be some lack of communication between the two bodies. Over the years, I have acted for the police union and I have acted against them, so I can see it from both sides. I suppose every organisation, a police organisation or an anti-corruption body, will very

jealously guard its own staff and powers and what it does and confidentiality and the like, but there seems to be in this state a concern by investigative police that the CCC does not have sufficient expertise—it does not possess the expertise that the Western Australian police service does. It is jurisdictional. There may be substance to it and there may not, but there is that problem. You saw it recently over the raid on the *Sunday Times*, one of the Sunday newspapers here, with the police saying they did not want to get involved in that. I cannot imagine why they would say that! There is a lot of merit there, isn't there?—raiding newspapers and prosecuting journalists. But I think the police very wisely thought, 'This just isn't a matter that should concern us.' But the CCC thought differently. They can see it now, of course, but they did not see it then.

**Mr HAYES**—I am interested in the notion of the integrity oversight of bodes that exercise extraordinary powers. Clearly, the Australian Crime Commission is one of those. It does have its functioning and its officers overseen by the Australian Commission for Law Enforcement Integrity. Here in Western Australia, as I understand it, police officers and sworn police have their actions and conduct overseen by the CCC itself. If there are separate operations conducted by the CCC or, alternatively and quite conceivably, joint CCC-Western Australian police operations, how is that coercive power likely to be overseen in terms of a proper integrity regime applying to all those who exercise coercive power—or extreme power, in this case?

**Mr Trowell**—Mr McCusker QC is the parliamentary commissioner, if you will. There has been tension between him and Mr Roberts-Smith. I think that is unfortunate. I am a McCusker fan and I support what he has said and done and the reasons for it. I think the CCC just has to accept that there are limitations to what it can do and it must be accountable, and it must be accountable to the parliamentary commissioner. That is his role. He has done no more than carry out his role. The ACC is probably the most supervised organisation of any crime body in the whole of Australia. There are more levels of accountability than you could possibly imagine. Sometimes you may fear that that level of accountability has the potential to impede its ability to function. But the ACC seems to accept that that is the way things are, given that it is a national body and that it must cooperate with the state bodies and the state police forces and associations.

**Mr HAYES**—There is more of a propensity in Western Australia to use the facilities and services of the ACC as opposed to the CCC, in terms of serious organised crime investigations.

**Mr Trowell**—I am not sure that is true. It may well be so, but I just do not know that. I suppose I am going to be drawn into being a critic of the CCC, but I think one of the problems is that the CCC inherited a lot of the staff from the police royal commission of 2002. Some of us thought that the CCC, as it then became, should really have started afresh—that you should not just staff it with people who were left over after a royal commission. There are very competent police officers, both in the Federal Police and in the state police, nationwide, and I think that may be a source of irritation between the state police and the CCC. A lot of those officers who, according to the police, do not have the operational experience that they do are then making these types of decisions and reaching conclusions when there is no evidential basis to do so. They are making comments about people's reputations by simply saying, 'We just don't believe them,' but then there is no official finding against them—all the matters that Mr McCusker has raised.

The ACC does not seem to find itself in that position, not that I can recall. The ACC does not seem to be in constant conflict with its various policing bodies that comprise its board. It does not seem to be accused of being incompetent—other than the people who are examined by it, of course!

**Mr HAYES**—The ACC has on its board each of the police commissioners from every state and territory jurisdiction, so I do not think there will be the level of differences as in the former National Crime Authority.

**Mr Trowell**—I was asked by jurors recently about whether there should be another supervisory body over the CCC to mediate between the police and the CCC. My response was: 'How many review committees do you set up? There is a parliamentary review committee and a parliamentary commissioner. You set up a whole system of bureaucracy that ultimately becomes the end in itself.'

**Senator PARRY**—Do you see the Corruption and Crime Commission Act as being sound, so there is a sound basis for it to move forward?

**Mr Trowell**—With a bit of commonsense and a bit of goodwill, it should function efficiently. It is probably going through a teething problem with the change of state commissioner. I honestly do not know enough about it to comment in relation to the state organisation but, just by way of general observation, it would seem to me that commonsense and a desire to make it function efficiently between the police, the parliamentary commissioner and the commissioner of the CCC is the way to go rather than setting up another layer of bureaucracy, another layer of accountability, because, again, it would make things more complex—'Let's set up a committee for this.' 'Thank you, yes, Prime Minister,' and that sort of thing—whereas I think they could work. The parliamentary commissioner is one of the most experienced lawyers in this state and has a reputation for the highest integrity, and I think he has discharged his role as the person who oversees the operation of the act and the function of the commission in a very responsible and insightful way. If the CCC does not like that, it is just a bit too bad—sometimes that happens—but I would have thought the debate has been pretty robust and one would hope it does not descend into a pettiness that impairs its function.

**Mr HAYES**—Are we losing effective services of what could be seen as an integral part of contemporary criminal investigation?

**Mr Trowell**—I suppose the Western Australian police service would not see it that way. I suppose it really depends on the role you see organisations like the ACC and the comparative state bodies doing. Are we simply turning to these bodies because the existing system does not function properly—the police are incapable and lack the expertise or the experience to deal with organised crime, for example, or to deal with a whole range of issues? The state police organisations clearly do not have the powers that are exercised by the various anticorruption bodies. Do we simply ignore the police and then turn to these bodies in circumstances where there is every potential for individual citizen's rights to be infringed in some way? I cannot speak for the state organisations but my impression is that the ACC is very conscious of the limitations that operate upon it. Of course, they always want more than probably they are entitled to, but that is just the nature of any organisation. They get frustrated because they cannot do everything they want to do but I think for the most part they accept—and the examiners really demonstrate

this—that they do have those limitations, they do attempt to exercise them carefully and with due regard for the process of law. But, of course, not everyone is going to be happy with the way the examiners discharge their functions.

**Mr HAYES**—Unlike the rest of us, you are one of the few to have had the opportunity to sit in and see an examination taking place. I know that has exercised the minds of my colleagues from time to time. Can you quickly take us through how it does occur, because you did indicate that one of the things we possibly should think about is making recommendations to have certain procedures. I think we actually did that a couple of years ago, but maybe it was not taken up.

**Mr Trowell**—The reason I suggested there be a set procedure was so that there is some uniformity between all the examiners, rather than one examiner doing it his or her way and another doing it a different way. But, in all cases, when they start off an examination the person will be represented and the examiner will tell them the nature of the process, what rights they have, what the area of inquiry will be and that they must answer, and generally go through that whole process with them, leaving them in no doubt about what is taking place and in no doubt about their obligations under the act and any protections that are afforded to them as well. I am not sure my client answered very well, but he was happy. He said yes to everything, I suppose, but I am not sure he gave them what they wanted. The counsel assisting the examiner will then put them to the sword, if you will, take them through and show them documents and ask them about various aspects that they are interested in. What they are interested in may not always be apparent.

In the three matters that I have been involved in—twice when I appeared as counsel on behalf of a person being examined and once as an observer—on no occasion could the person being examined by an examiner claim to have misunderstood the process or the rights that they had as persons appearing before an examiner. They were three different examiners, each one of them very consciously determined to explain the process to make sure they knew their rights—no doubt so that it could not later be said that they were deprived of the opportunity of knowing what it was they were facing. That is on top, of course, of a lawyer appearing for that person.

**Mr WOOD**—You raised the issue of contempt powers earlier. With the coercive powers, are there contempt laws in relation to that?

**Mr Trowell**—In existing legislation?

**Mr WOOD**—Yes.

**Mr Trowell**—No.

**Mr WOOD**—Is that something you are recommending?

**Mr Trowell**—Yes. Under the old NCA Act there used to be a heading which talked about contempt—I think it was section 35; I cannot remember now. But it really was not contempt as we understand contempt in the face of the court—that is, defying the examiner, for example, or defying the judge and just saying, 'I'm not going to answer this and I'm not going to give you any documents.' That went out when the amendments came into play, but really what you have is a whole series of powers which compel you to appear, to bring documents, to answer

questions and to surrender particular types of documents. There is an offence of hindering or obstructing an examiner in the function of his or her office. But each one of those simply relates to a matter being referred to a DPP for prosecution, and then it just disappears into the ether to emerge maybe two years later when it is all over and the sting is gone. What is the point of penalising someone substantially for an offence they committed two years before? This is always one of the things that criminal lawyers will argue—'What's the point now? Things have moved on; lives have changed.' Judges seem to cope with that.

The importance of there being a contempt power is that you can react in a proximate and direct way. The old notion of contempt was that you could only commit contempt in the face of a court—that is, by just refusing to answer questions, for example. Whereas I think that should be an extended definition, with any amendments, so that it takes account of refusing to answer a summons or refusing to bring documents when summonsed to do so before an examiner. I think that rounds it off, because any one of those acts could be regarded as a contempt. The person can then expect to be dealt with, hopefully, expeditiously—that is: 'All right. You're not going to bring a document. We've had you brought before the examiner. You refused to answer a summons, you can answer the questions now.' If they do not do it, then you make your referral.

You noticed that I put in the report that there was an obligation for the ACC to prepare a prosecution brief for the DPP. You would not need to do that. You would simply need to use the documents that I have suggested—a certificate, setting out the basis of the contempt, sending any documents that you rely upon, and videotapes. I think I suggested that the certificate be prima facie evidence of the contempt. That is so that you do not have to prove everything. It is rebuttable, of course. A person can say, 'I disagree with that,' and they can challenge it on that basis.

**Mr WOOD**—What time frame would you recommend for taking a matter before the courts for contempt?

**Mr Trowell**—If someone is in contempt of a court, the judge will deal with it there and then, or at least adjourn it, say, for seven days for the person to think about it. The judge may say, 'You can come back in seven days and you can purge your contempt'—that is, you can demonstrate to me that you have changed your mind and you are now prepared to cooperate. The judge may or may not penalise, depending on the extent of the contempt, I suppose. But the whole essence of it is so that the proceedings are not derailed. Imagine if you have a trial on, say, a civil case or a criminal case and someone stands you up. The whole process could be derailed if that person is not dealt with expeditiously.

I can speak of my own experience in a case involving the police royal commissioner, where a person of some notoriety, a journalist, went down and said, 'I'm not going to answer any of your questions.' The commissioner cited him for contempt. He went down before the Supreme Court. Ultimately, that person purged their contempt before the judges. He was fined $50,000 for it. The whole purpose of that was to demonstrate to the community or to people appearing before the Police Royal Commission that they could not get away with it. They had to answer the questions. They could not just stand up the commissioner and say, 'I'm not going to answer your questions.' So the essence of the charge was that this person held the commission up, they had ridiculed it and they had demonstrated to members of the public that they were not going to comply. The danger for the commission was that it would simply fall apart in a way if people

called before it said, 'Well, nothing happened to him; it's not going happen to me.' So the essence is to bring such people before a judge as quickly as you can—but that is where you need a bit of cooperation.

As I said, there is a reluctance amongst the judiciary across Australia to have serious regard for the ACC and its role within the community, crime enforcement and criminal intelligence. They tend to say, 'We're not involved in that, really,' and so they push it aside. I remember being told about a Victorian Supreme Court judge, a male, hearing a case involving the Office of Police Integrity. He spent most of his judgement lecturing the ACC upon the procedures relating to contempt and the like. He was a civil judge, so he probably did not understand the dynamics of a criminal prosecution. That has been cured in Victoria. From the ACC's point of view, they did not like the judge, I suppose. He did not say what they probably wanted him to say. That is the way you go with any process before a court: sometimes you get a good judge, sometimes you get a bad judge and sometimes you get a judge who understands in a more intimate way what is taking place. The intention of the Chief Justice of Victoria was that these matters would be expedited. He understood. He declared that it was critical for the OPI to be seen to be able to respond effectively and for the person to be dealt with quickly. So the message went out that this was what we were going to do.

I will say—and I make mention of this in my report—that I think the Law Council of Australia provided a substantial critique of the whole question of contempt. I think it misunderstood it. I think it took the view that what the ACC was asking for, or maybe what I was going to find, was that the ACC wanted the power to deal with contempts itself. That was never their intention. They do not want it. Why would you take on board something as complex and difficult as that? They took the view that it is not a court et cetera. So I think most of its arguments fell away, because it really was not what was being sought. But I think there is a general reluctance of law bodies—in particular, lawyers who say they are taking a civil libertarian view. Sometimes I wonder whether that really is the argument. I do not see. I did not approach any of this material from a view that, I would have thought, would have directly infringed someone's civil liberty or legal rights or due process. I think that is important. But, if you set up these types of organisations, you have to give them effective powers to function effectively. Of course they have to be reviewed. That is the whole purpose of the committee, isn't it?—to make sure that they are discharging their obligations under legislation which is pretty draconian in a way and which has every potential to infringe the rights of citizens.

I think, by the way, that this committee has set parameters on the exercise of these powers and set reviews of the way they were to function, whether they have functioned effectively and whether there has been any undue prejudice resulting to any persons appearing before the committee. These are things that this committee should investigate, and you should be satisfied that the ACC is discharging its functions in that manner. I think I made the comment that the Law Council of Australia said, 'We're being impeded from our critique because we don't get access to a whole lot of confidential information.' That really was not the ACC's fault. There is an obligation of confidentiality imposed upon it so that it cannot disclose a whole range of issues, not only to preserve its ability to function but for the privacy of the persons who appeared before it. I think the Law Council of Australia just missed that point, really saying, 'We can't be critical of you because we don't know enough about what you're doing.' It really was not the ACC's fault that that was the case. I think the Law Council of Australia was right to raise these issues, because they are issues that, of course, would arise. Is someone being unduly prejudiced

by this? Are you using your powers to jeopardise someone's physical wellbeing? There was some concern that the examiners just do not care about that and that people are forced to testify in circumstances where they may be jeopardising their personal safety.

**Mr HAYES**—That is really revisiting the construction of the law itself.

**Mr Trowell**—Yes, it is.

**Mr HAYES**—Your recommendation actually goes to making those provisions work.

**Mr Trowell**—Yes. The other thing is that with the examiners, from what I have seen, not everything is done formally. I do not mean anything sinister by that. There is a lot of informality about the way an examination is conducted—that is, there are often situations where a person who is to be called for examination will suddenly see that it is to their advantage to cooperate on an informal level with investigators from the ACC so that their identity is not known or they are not seen to be publicly cooperating with the commission. So there is a lot of informal discussion between people who may be the subject of inquiry by the ACC and its officers. The examiners are also very concerned to ensure that no-one's safety is jeopardised by the fact that they will appear. That is why the procedures are in place for the examinations to take place in private, and they go to great lengths to ensure that. Of course, it might be said, 'Well, you can't keep anything secret,' and I suppose there may be some truth in that, but they do the best they can to ensure that that is so. So, as Winston Churchill said about democracy, it is probably the worst system except for every other system.

With the Australian Crime Commission I think that, of course, difficulties will arise, but I think the ACC is pretty responsive to it. I think we are well served by the assessors. When I spoke to them, I do not think they were just trying to impress me with how conscious they were about ensuring someone's liberty and that due process takes place. I think they were very concerned to make sure that what they did was effective. Involved in preserving someone's anonymity and making sure that their safety is ensured is doing the process properly, not haphazardly or recklessly so that a person would be endangered.

If word got out that the ACC were casual, reckless and indifferent to the security or the safety of that person, it is not going to help them at all. People will turn away and they will not cooperate. I think the difficulty is going to be, particularly when they deal with the outlawed motorcycle gangs, that they just need a little bit of muscle.

Mr Withnell, about two years ago, did an inquest where members of a motorcycle club agreed that they would participate in an inquest involving the death of one of their members. Their adherence to the rules of their own club was so great—there were 10 of them at the scene of a particular shooting—that they appointed a spokesman to inform the police about what happened and to speak on behalf of the 10 eyewitnesses. It was only because of their agreement that they would come to the inquest and tell their story that a whole range of inconsistencies emerged. They did not like being questioned, I can tell you now, as they shouted at me on one occasion. But I did check the underneath of my car every night for an explosive device. And that is true.

You are never going to have a perfect system, but I think you must arm the ACC with certain powers to make it more effective. Of course, put in place the various safety procedures that you

have put in place with any legislation—I think there are a lot of them there. What would be critical for the operation of the ACC is that this committee recommend, which I think it did in 2001, that there be a contempt power—not that the ACC exercise itself but that it do it by way of referral. In 2001 the government introduced that legislation into the Senate, but I think it failed to pass for whatever reason. So they might listen to you this time. Well, maybe not!

**CHAIR**—Are there any other questions? If not, thank you very much.

**Mr Trowell**—Thank you so much for hearing what I had to say. I hope my report has been of some assistance to the committee.

[2.12 pm]

**WITHNELL, Mr Edward Horace, Private capacity**

**CHAIR**—I now welcome our final witness for today, Mr Eddie Withnell. Do you have any comments on the capacity in which you appear today?

**Mr Withnell**—I appear as an individual with 35 years experience in the outdoor motorcycle community.

**CHAIR**—Mr Withnell, I invite you to make a brief opening statement, which will be followed by questions from the committee. Is that fair enough?

**Mr Withnell**—Thank you. I have tendered a written document and also, on top of that, I have placed what I will be saying now in my opening statement so that members can follow exactly what I am saying and have a reference to further material there if you wish to examine it further.

**CHAIR**—Thank you, off you go.

**Mr Withnell**—Members of the committee, thank you for offering me the opportunity of appearing here today and making a submission with regard to this committee's inquiry into the legislative arrangements to outlaw serious and organised crime groups. What I am going to say here in the public forum forms only part of what I have said in my written submission.

I have been a member of the outdoor motorcycle community for 35 years. Although we are not organised crime, as you know from the 1996 to 1998 National Crime Authority reports, we are a community which will be directly affected by the proposed laws which form the terms of reference of this inquiry. The National Crime Authority reports clearly state that outlaw motorcycle groups may contain opportunists who take advantage of criminal opportunities, but so too, I remind you, do members of the police force, political parties, the priesthood and many other organisations. By what criteria do you differentiate us from those organisations who, statistically speaking, are worse offenders? We must assume it is from police reports. Are these reports to be trusted when their authors have a vested and separate interest from yours, the executive, and those of the judiciary under the principle of the separation of powers? When that vested interest is manipulated by false reports which are untested or demonstrably false, the premise of reasoning on which these special powers are being proposed is rendered equally fallacious.

One of numerous such secret police reports—a lie, leaked through the media—was a year 2000 policy. In the *Weekend Australian* on 14 August 1999, in a special lift-out, the combined police forces of Australia unleashed their top-secret info bombshell that there was a bikie plot that there would be only six outlaw motorcycle clubs left in Australia by the year 2000. Every act of violence, every criminal act, every drug bust, every headline for the next couple of years was put down to this inevitable juggernaut. The Coffin Cheaters are prominently named in this article, but—surprise—we never knew anything about it until we read the article. The year 2000 came and went. It is 2008 now. Guess what? There is still the same number of outlaw motorcycle

clubs. If you have forgotten this prophecy, just google it. It lingers in cyberspace like the great embarrassment it is, refusing to go away. It never happened. It never was going to happen. It was a lie.

This history of using the media to publish lies disguised as police intelligence proves only one thing: immoral journalists have been in bed with dishonest police officers for far too long, whispering sweet nothings in each other's ears, conspiring to pull their grubby underpants of lies, soaked and soiled in deceit and embroidered with their self-interest, over the eyes of some of the most prestigious committees in this country.

How is it these lies have been unchallenged for so long? By outlaw bikers refusing to speak with the media and refusing to give evidence against the police in a court of law, we have been convicted by our own code of silence—not the mythical code of silence of which the media speaks when bikers exercise their right to remain silent when facing criminal charges. Rather, it is our refusal to speak to the media and rebut these lies, by saying nothing in our own defence. That has brought us to this very situation where lies told about us have gained currency.

Having stereotyped us, secure in the knowledge that we will not rebut their lies, a convenient bigotry has been generated against all bikers, outlaws or otherwise. As happened with 'gooks', 'niggers' and terrorists, once you dehumanise them, you can justify policies abhorrent except in a state of war. By rendering bikers all alike, a homogenous species not unlike the first Cro-Magnon man, you can create enough fear to justify removing every Australian's right to freedom of speech and freedom of association—for bikers have no special rights; our rights are your rights and your children's rights for generations to come.

We bikers are not homogenous; we are heterogeneous. Like you, we have differences within us as well as between us. If you are beguiled into thinking for one minute that men such as me, having been imprisoned for crimes which not only cost me a decade behind bars but have branded me with shame and stigma for a lifetime, would egg on younger men to emulate my actions, then you are wrong—manifestly wrong.

We are not driven by drug wars or any other fanciful creative writings of the media or the secret police. We are so fiercely individualistic and independent that, as the aforesaid NCA reports state, therein lays the propensity for violence. This is the hub of the wheel of causality which crushes the lies about what motivates outlaw bikers. We pride ourselves on not knowing what our brothers or others are doing, so as not to be contaminated by another individual's actions. To quote Nietzsche, 'Between the thought and the deed the wheel of causality does not necessarily turn.' Thus, bikers may commit violence but not for the lies propagated by the police and the media who try to fit that violence into their frame to suit their own agenda. And that agenda for these false reports and lies? Crime is big business—not crime prevention but the exploitation of crime by vested interests, which include those of the police and the media.

The classic example of this stems from a recent case in Brisbane, where the judge made a scathing attack on the seizure of assets legislation, saying that armed with special powers police and politicians do not want to bust criminals too early. They want them to grow plump so that the revenue scoop at the end is bigger. Now the deterioration has set in, you have lost the moral high ground. Our attorneys-general are becoming to drug dealers as a pimp is to a prostitute: they have been corrupted in the sense of being contaminated by the lust for drug money—sitting

back, letting the police have unfettered reign whilst kids everywhere are getting addicted, homes are being burgled and ice-fuelled violence is driving the anarchy on our streets. Why solve the crimes and wipe out all this when it creates just such big business? These laws and the proposed laws are designed for men of convenience—politicians, policeman and public servants who avoid doing the work today they can put off until tomorrow. It is about fattening up the kill, about getting a promotion, more staff, a bigger desk allowance, a pay rise and creating more work for their junior colleagues further down the line.

With the demise of the Soviet Union has come a parallel demise on the Left in the dialectics of politics, philosophy, law and journalism. The policy of laissez-faire has made its way back and politicians, university professors, jurists and journalists have lost their way. Terrified of being labelled 'a leftist', perhaps even 'a terrorist', they have abandoned all old principles and have surrendered unquestionably to pre-digested answers and policies of dubious, self-serving authorities.

These proposed laws attempting to mount up and ride in on the back of the bikies will quickly become corrupted, then politically abused and run unchecked on the animal rights groups, right to life activists, trade unions, the smaller political parties, the student guilds and every other group that a secret police deem undesirable for generations to come. That is what happened with every other bill you ran off our backs, including section 54B in the 1970s, which a Labor government rode back into power on—back on our backs, if you like.

What is needed is not more powers but more accountability from those who are meant to be doing the work. The time has come for someone to make these men accountable, and you, ladies and gentlemen, are the ones on whose shoulders that responsibility falls. On this day, the fourth of July, when Americans worldwide celebrate their independence with their constitution and bill of rights and its enshrined freedom of association and freedom of speech, will you willingly deprive Australians of those very same rights?

**CHAIR**—Thank you, Mr Withnell.

**Senator PARRY**—Thank you, Mr Withnell, for your submission to this inquiry today. On the first page you mention that, statistically speaking, there are far worse offenders than outlaw motorcycle groups. Would you agree with the proposition that one of the reasons why the statistics are so low is that it is very difficult to gain access to the organised crime culture within outlaw motorcycle groups? I would be keen to hear your response.

**Mr Withnell**—No, I would disagree with that. I believe the statistics are there and the evidence is there. But, as I said earlier in the document, if you look at a lot of the reports that come in about outlaw motorcycle clubs all the time, they are lies. The one I read out there is just one example. I would like to point to a document which is the basis of all police operations in Western Australia. That document is in the appendix. It is 'Motorcycle Gangs 101'. In there I set out my argument—

**Senator PARRY**—Sorry, can you give us a page number?

**Mr Withnell**—No, I cannot. I have it in my appendix.

**Senator PARRY**—Is this what you have handed to us?

**CHAIR**—It is halfway through the document.

**Mr Withnell**—Yes, it is referenced as an appendix to the submission.

**Senator PARRY**—Yes, I have it.

**Mr Withnell**—In that handbook is set out a training manual for police to interpret outlaw motorcycle gang behaviour. In there, they interpret the wearing of number 13 on our cut-offs to mean the 13th letter of the alphabet, which is 'm'. Therefore, by logic, that means 'marijuana'. In the handbook it says, 'Not only does it mean marijuana; it means the wearer is an amphetamine trafficker.' It's an 'm' for smoking marijuana, but how does the trafficker bit come in? Doesn't amphetamine start with '1'? 1 and 13 makes 14. It is not logical.

They also put something in that handbook about runs. Apparently, we do not have a run truck; we have a crash truck, and that crash truck is used for carrying guns and smashing through police barricades. For 35 years we have been riding across the desert with good, honest policeman following us making reports. Never in 35 years has a truck anywhere in Australia ever crashed through a police barricade. Secondly, it is in our constitution that if you put a gun or drugs on that truck you will be dishonourably expelled from the club.

This document is a lie. Where did they get this information? They got it from a paperback novel by a drug fuelled lunatic in America called Hunter S Thompson—more famous for his *Fear and Loathing in Las Vegas*—called *Hell's Angels* that was written in the sixties. They have transported this knowledge, put it in this document and trained all their police on it.

The point I am making is that they are training the police to look for something that does not exist. Then, because they cannot find it, they say, 'It's their code of silence. It is too much for us. We throw our hands up.' But if you have a false and fixed perception of something—this is basic sociological and psychological stuff—that is what you are going to perceive. You are going to perceive that a typical bikie must be dirty. It is like with Aboriginals; they have to be dirty. This is basic stuff. People project stuff on to us and, when they cannot find it, they have to have a reason why they cannot find it. They cannot say, 'My perception is wrong' or, 'This very handbook that I'm training all my police officers with is nonsense.' No, it has to be—

**CHAIR**—Sorry to interrupt, but are you still a member of the motorcycle gang?

**Mr Withnell**—That is correct. I have taken a retirement package.

**Mr WOOD**—So you are a member or you are not a member?

**Mr Withnell**—I am a member, but I am not an active member.

**CHAIR**—When you make a broad statement about motorcycle gangs, are just referring to your own group's constitution about drugs or does every other motorcycle gang that you are aware of—

**Mr Withnell**—I cannot speak for anything other than what is in our constitution, but I am aware from my over 35 years of experience with other clubs that none of their trucks have ever crashed through any police barricades carrying guns either.

**CHAIR**—You say that you can only speak on behalf of your club, which has a constitutional rule that forbids drug running; is that correct?

**Mr Withnell**—The placement of any contraband—

**CHAIR**—I cannot recall the exact words you used, but—

**Mr Withnell**—The wording is 'no contraband allowed on a run truck'.

**Senator PARRY**—You refer to yourself as part of an outlaw motorcycle community, and for 35 years you have been a part of that. Do you accept the title 'outlaw'? Do you accept that that is part and parcel of what you are?

**Mr Withnell**—It is. So it is ironic that this document is going to outlaw outlaws.

**Senator PARRY**—It could be ironic, if that is the case. Also, I just want to jump ahead. You talked about 'proposed laws'. There are not any proposed laws in front of this committee at this point in time. We are commenting upon legislative arrangements throughout Australia. We are looking at this from a national perspective. There are no proposed laws from our perspective, but we are keen to seek commentary from every agency in every state and from individuals such as you on what the implications are of legislation change and reform in Australia. Being a member for 35 years of an outlaw motorcycle community, what would you say are the day-to-day activities of an outlaw motorcycle gang or group? What would you describe as your main thrust for coming together and your main activities?

**Mr Withnell**—Basically I would say that the hub of it is runs. Going on a run, a ride, on your motorcycle is the hub of it. That is another thing that is misunderstood and misinterpreted again. Police go along on runs. They think if they accompany us on a run we are not going to have a good time because we are not going to be able to booze up and do everything they think is our raison d'etre. That is wrong. The raison d'etre is to be on that motorcycle. The first day you are on that road, all you think about are all the things in your life—the things you have not done, the things that are unstructured and things like that. On the second day out, you actually get away from it and start to enjoy it and come back to yourself. On the last day you start putting the structure back together—all the jobs you have got to do at home, all the unfinished work, all the tasks. That is really at the core of it. Believe it or not, it is a bit like the book *Zen and the Art of Motorcycle Maintenance*. That is at the core of the motorcycle community. Other than that, I work about 18 hours a day and very little of it has anything to do with the motorcycle club.

**Senator PARRY**—Do you categorically state that there has been no organised crime activity in any motorcycle organisation you have been involved with?

**Mr Withnell**—I cannot speak for motorcycle organisations other than the ones I have been involved in. I do not know if you are familiar with all the things that have happened in Western

Australia just recently, but let me say this: any person who tries to use the club as an instrument for organised crime soon gets shown the door.

**Senator PARRY**—Let us leave out the term 'organised'. What about criminal activity within motorcycle clubs?

**Mr Withnell**—I accept that there is criminal activity in motorcycle clubs, as there is within every other organisation—the police force, the judiciary, the priesthood.

**Senator PARRY**—Do you accept that it is prolific in motorcycle clubs?

**Mr Withnell**—I would say that statistically it is less than in the priesthood, the judiciary and the police force.

**Senator PARRY**—Forget the statistics. From your own observations, do you think it is prolific within motorcycle clubs?

**Mr Withnell**—No, I do not think it is.

**Senator PARRY**—Do you believe that motorcycle gangs, clubs, groups use the threat of intimidation by volume, by size, by violence? Do you accept that that happens?

**Mr Withnell**—I accept that it may have happened, but I do not believe it is an intent. I believe that it is because of the way we are—our background, our childhood and where we come from. You have got to remember that motorcycle clubs form through reversal. What did I say about the number 13? It does not mean that at all. The number 13 is the reversal of a number. Anything that has negative powers, if you were alienated as a youth, if you can reverse the order it gives you power. By reversing it and coming together in a group where you get people who think like you, you stop being alienated. From there, you can slowly start reconstituting yourself as an individual. During that period, there was a lot of destructive behaviour committed—I will not deny that—but times have changed in the last 30 years. I understand that it is perceived as threatening, but it is a bit like when you get three policemen coming to the bar to drink—you can empty the bar out pretty quickly. Any group of people who have perceived power do appear to be intimidating. I will concede that.

**Senator PARRY**—Why do motorcycle gangs in particular have a propensity to own and operate nightclubs and get involved with security guards at these nightclubs and venues? Can you explain why that goes hand in hand with motorcycle groups?

**Mr Withnell**—No member of the Coffin Cheaters that I know of is involved with security. There was one, but he is no longer a member—and I spoke before about conduct. I do not own a nightclub, but I run one with my cousins. I have been involved in entertainment for over 20 years. I have run rock festivals. I have run events everywhere. I have a degree in literature and theatre, and that is my background. So if you are referring to me then, yes, one member of the Coffin Cheaters is involved in nightclubs as an entertainment manager. But that is it. There is no propensity. The other ex-member has gone.

**Senator PARRY**—What knowledge do you have of other clubs?

**Mr Withnell**—Particularly in Western Australia, I do not know of any.

**Mr WOOD**—What about other states—South Australia?

**Mr Withnell**—I could not comment on that. It is a bit like what I said earlier. I have tried to run my life by just not wanting to know what they do. That is another problem when we talk about this law. You have talked about restricting people from speaking, but consider my situation. I voluntarily do not speak to certain people because I do not want to know. That excludes me from a whole domain of information. Sometimes I will find out four years later that I could have approached someone who knew someone who was doing concreting or building when I needed a builder—and I did not know because I did not bother to talk to them because I was worried I would be contaminated. If you introduce a law like this you are going to put that right through society. You are going to have a society that is too scared to talk to other people, especially if they have been labelled, and therefore the effect on a dynamic and healthy economic system is going to be a lot bigger than you guys envisioned.

**Senator PARRY**—Are you referring to the South Australian legislation that is going to come into effect very shortly?

**Mr Withnell**—Yes. I had assumed that you were working on a panel that is putting forward similar laws Australia-wide—and that is why I am speaking against that notion. I am not doing it as a biker. I believe firmly in this stuff. I have learnt a lot of this through my life.

**Senator PARRY**—How many members of the Coffin Cheaters are there in Western Australia?

**Mr Withnell**—I could not tell you the precise number, because I have taken a retirement package, but I would assume there would be around 40.

**Senator PARRY**—When you say 'a retirement package', taking the mirth out of that, are you seriously in retirement mode within Coffin Cheaters?

**Mr Withnell**—That is correct.

**Senator PARRY**—So you hold no position of authority or influence in that sense. Is that a standard thing that happens after 25 years service in a motorcycle club?

**Mr Withnell**—Yes, a few blokes go out—I think there is a 20-year policy. I pulled the polish after about 28 years, but it was a fairly recent introduction into the club at that time.

**Senator PARRY**—Why does that take place, and what does that mean to your status? Does it mean you still go on runs; you just do not have any organisational capacity?

**Mr Withnell**—Yes, you still go on runs. As I said before, riding your motorcycle on runs is really what it is all about, believe or not—that is the guts of it.

**Senator PARRY**—So how does the hierarchy work within the Coffin Cheaters, for example? Is there a president, a secretary?

**Mr Withnell**—No, we operate on an informal basis where people take on jobs, whether it is entertainment—things like that. The structure has been different in the past. As I said, we have got rid of certain members who would try and use the structure to suit themselves. We do not have any of that.

**Mr WOOD**—Can I follow up with two questions. How do you actually attract new members?

**Mr Withnell**—There has been an old saying in the motorcycling community for years—we don't; they come to us.

**Mr WOOD**—Secondly, you mentioned—and I am not 100 per cent sure of the incident you are talking about—that you have actually asked a member to leave the club. What situation or events would take place for that to happen?

**Mr Withnell**—We believe that anyone who wants to use the club to their own advantage through criminal methods is not a bloke who should be a brother and who respects what other blokes do in that club and respects the integrity of that club. If you want to come into an outlaw club and use that club solely for your advantage and use it for criminal activities, as I said before, you will get short shrift.

**Mr WOOD**—That includes drugs, intimidation, blackmail, everything like that?

**Mr Withnell**—That is right.

**Senator PARRY**—So how do I join? Do I have to have a certain bike? If I want to come along and join tomorrow, what happens?

**Mr Withnell**—I suppose it would be a bit like joining a political party. First of all you would have to get into a branch, and of course the branch might be stacked. When you get there you might find that, because it is stacked, they are looking after someone else and not your interests. This happens in all sorts of things. Get yourself a Harley Davidson and come down for a beer on a Friday night and we will check you out.

**Senator PARRY**—Is it that simple?

**Mr Withnell**—That simple.

**Senator PARRY**—What is the checking out? Because I am a member of a political party would that exclude me?

**Mr Withnell**—No. First of all you have got to show that you are a man of principle.

**CHAIR**—First of all you have to be a man. Women are not eligible for membership; is that is correct?

**Mr Withnell**—That is correct. It is a bit like the Weld Club here in Perth.

**CHAIR**—I just wanted to be clear.

**Senator PARRY**—You have to be a man of principle—what else?

**Mr Withnell**—An individual, a strong individual; you have got to have character. Those are about the qualifications. You look for men who have got character and who are strong individuals. You do not want someone to come along who wants a free ride—exactly what you said earlier—who wants to get with a bunch of people and use them to intimidate people, to do whatever his nonsense is. You are looking for individuals and strong characters.

**Mr WOOD**—Can I follow up. Obviously you have had a bit of a spell in jail. We do not want to go too much into the details but, with regard to that, did you find that your being a gang member contributed to an incident which took place, or did that have nothing to do with other gang members?

**Mr Withnell**—I believe I would have gone there anyway because of my upbringing, the things I went through and the attitudes that were instilled in me. I came from a family farm. My old man was a survivor of the Burma railway. He had very strong views on people. He had very strong views on behaviour. When he died at a certain age, I then took those views as my own and I went around imposing them on people. I believe that the way I was going I would have ended up there anyway, regardless.

**Mr WOOD**—Was that crime or were a number of crimes committed with other gang members?

**Mr Withnell**—It was.

**Mr WOOD**—Have you seen in the club that members involved in crime commit crimes with other gang members?

**Mr Withnell**—I did, especially in those formative years.

**Mr WOOD**—What is the difference now? The situation, especially in South Australia, is that you have pretty much a war between the bikies. There have been a number of shootings on the streets. The public have been very much intimidated. The police are basically saying, 'We need these laws because certain elements of the outlaw motorcycle gangs are absolutely out of control.' We are not hearing of that to the same degree in Western Australia, but obviously if the same thing happens here you are probably going to find the same laws imposed in South Australia. What action as a club would they take to rid those members from the club so that they do not get the same situation as in South Australia?

**Mr Withnell**—I think there is some confusion there. Why would you get rid of someone for doing something that he did off his own bat? He was not using the club to benefit himself or as a tool for his own greed or devices. I said earlier that therein lies the propensity for violence—men are very fiercely individualistic and very protective. Therein rests the danger. The police could have a chance to stop that early. That is my argument. It is not just me saying this. I have spoken to lots of retired senior police and they say: 'Gee, I'm glad to be out of there now. It's all about sucking up to the politicians and stringing the job out till something happens further down the line, and then you get a promotion. I'm glad to be gone because, nowadays, we'd see you were

stuffing up, we'd come round and pinch you, you'd be in jail and you wouldn't get the chance to do the next thing because we'd already have you.'

**Mr HAYES**—They have told you that?

**Mr Withnell**—Yes.

**Mr HAYES**—Do you want to name them?

**Mr Withnell**—No, I do not. Even though they are retired now, it is a bit like a secret brotherhood, I believe. Don't they all still go to the club together, drink together and scheme and plot crimes together?

**Mr HAYES**—If you name them, we will find out.

**Mr Withnell**—I do have a list on the back of my documents here, in the appendix, which you may care to look at. I have a list in respect of Sydney and tens of millions of dollars, where the police are involved all the time. It is not a couple of hundred thousand dollars but tens of millions of dollars. It was just before the anti-gang laws were under fire. They were the untouchables—an elite band of Australian Federal Police—gangsters with badges.

**Mr HAYES**—This is about Mark Standen.

**Mr Withnell**—And Michael Anthony Wallace, convicted of stealing $20 million worth of seized heroin.

**Mr HAYES**—He sounds like a good policeman to me!

**Senator PARRY**—Have the police got it wrong in the intelligence and the indications that outlaw motorcycle clubs are actively engaged in criminal activity? You are suggesting they have got it wrong.

**Mr Withnell**—I believe that it is in their interest for political reasons—the climate that exists today. What old coppers have told me is this: 'In the old days, we'd go in and pinch you for something. We'd see that you're a troublemaker—we've been around the police force for donkeys years. We can see where you're headed, so the first chance we get to pinch you for something, we're going to pinch you. We'll put you in jail for two years. By the time you get out, we've disrupted you, we've disrupted the crew you're with and we've watched whoever slips in next. We know what's going on.' But that does not happen now. Now it is: 'We see you're a troublemaker, just like that bloke in Brisbane. You've got an $800,000 house. Let's sit back until you've got an $80 million one.' Sometimes they sit back watching bikers, waiting for this frame to fit. And it does not fit. And what they thought would happen, does not happen. They think, 'They must be so clever; they must be so cunning.' No, you are trying to fit the wrong frame. If you keep doing that, you are going to have outbreaks of violence. You are going to have outbreaks of crime because you are not doing basic policing work. That is my argument.

**Mr HAYES**—I am sorry for interrupting you, but do you have a difficulty with the legislation for unexplained wealth?

**Mr Withnell**—Only the same explanation you would have if you were charged with it.

**Mr HAYES**—No. With respect, it is not a charge and it is not a crime; it is a requirement to explain how you gathered that wealth. Do you have a problem with that?

**Mr Withnell**—I do not have a problem with it personally because I do not have any wealth. Let's be serious!

**Mr HAYES**—That is fine, but just for the record—

**Mr Withnell**—For the record, I do have one comment on it. In a corrupt system these laws are never used equally. My argument is that men who do not fear the removal of the freedom of association and freedom of speech have to be inherently corrupt.

**Mr HAYES**—With respect, let us get back to this.

**Mr Withnell**—That is the same point that you extend to me.

**Mr HAYES**—In terms of unexplained wealth, do you or your group—or groups generally—have a problem with laws which require people to explain the gathering of their wealth?

**Mr Withnell**—Only in the sense that, if I came to you and asked you to explain everything you own, I will bet you you could not. That is the only problem I have with it.

**Mr HAYES**—We actually do that disclosure regularly. What we earn is on the public record.

**Senator PARRY**—Which is not much, either.

**Mr Withnell**—You are probably like me.

**Mr HAYES**—These guys go through what I own. Do not worry about it.

**Mr Withnell**—While they spend your wages at the pub! But, no, only in that sense. That is the only problem I have with it. I do not believe most people could actually explain everything they own.

**Mr WOOD**—I think we are more referring to someone in the community who may be a member of any gang—forget bikies or even an individual—and all of a sudden they end up having assets to the value of, say, $15 million to $30 million and they have been a factory worker all their life. Would you support them being looked at with this legislation?

**Mr Withnell**—It is not my job to support that, but, if you were to ask me personally what I thought, I would say, 'Gee, they would want to be able to explain it.'

**Senator PARRY**—Exactly.

**Mr HAYES**—You heard Mark Trowell QC's dissertation on the legislation that is before us before you arrived. One of the things that he is recommending is that we strengthen the laws in terms of the coercive jurisdiction of the ACC, which, in that respect, can direct people to cooperate, produce documents and answer questions. He is saying that we should actually strengthen those rules. If people do not cooperate, that becomes the offence itself, and we should fast-track the prosecution of that offence. You do not have a problem, I take it, with those laws being applied to you or members of your group, and you would cooperate and answer the questions?

**Mr Withnell**—With regard to this, I am not in the position to say that right now. It is not that simple. I might take offence, because I am a different sort of character from a lot of other people. The reason I am here today is that I feel so strongly about these issues, believe it or not.

**Mr HAYES**—Can I say—

**Mr Withnell**—Just hang on a minute, Mr Hayes. I will put it this way: I might have an objection to it if I felt that you were targeting me or bikers as opposed to some of the politicians and some of their rich mates. I know people in this town who are members of different parties and who I am damn sure could not explain where their hundreds of millions of dollars come from. They are not criminals like us. I have a criminal record. It is easy for me. You can go and dig it up and say, 'This bloke's a criminal; he has a criminal record. Now let's drag him in and have him explain it or something.' How come you do not do it to everyone else? If you do it to everyone else, then I have no objection.

**Mr HAYES**—The Australian Crime Commission has targeted the task of looking at serious and organised crime. By definition, it is a targeted operation to that extent. It does have coercive powers and can direct people to answer their questions. What is being put before us is that we should tighten that up. If people do not cooperate and answer questions, we should actually beef that up as an offence and, I suppose, bring the remedies down more quickly in punishments for not cooperating. That is really what has been put before us. What we are—

**Mr Withnell**—I can say only one thing about that. Excuse me; I am not trying to be facetious. I do not know if you ever saw that Maxwell Smart movie. There was old Agent 86, and the Chief used to say something to him. Then he would say, 'Did you get all that, Max?' Max used to say, 'Not all of it, Chief.' He would say, 'Which bit didn't you get, Max?' and he would say, 'The bit after "Now listen carefully."' I do not fully understand what you are talking about.

**Mr WOOD**—Basically, he is talking about heavier penalties for people who do not actually cooperate with the coercive powers—

**Mr Withnell**—I am not familiar enough with—

**Mr WOOD**—That is okay. Can I just ask another question? You have obviously come here today. Have the Coffin Cheaters motorcycle gang asked you or given you permission to speak on their behalf today?

**Mr Withnell**—As I said, I am a bit different from a lot of other people. I have a big policy about freedom of speech and freedom of association and issues like that. I have been through

several major catharses in my life, where I have had to come to grips with who I am and what I have done. To me, these issues are important, and I have come along to speak on these issues. I spoke to the club and I told them I wanted to speak on these issues and that I felt strongly about it. They said to me, 'Well, if that's what you want to do, go along and do it, Ed.'

**Mr WOOD**—Thank you. I know you were saying you are removed from the club, but say you have the situation in the next week or so where a couple of gang members or members of the club are actually convicted of a serious charge, whether it be blackmail or drugs or whatever else. What action would the club take against those two members, for example, if they were acting together—not going around using the club colours but going around committing crime? Would they be expelled from the club or allowed to stay in the club?

**Mr Withnell**—If your son and daughter were convicted of blackmail or something like that and they did not use your family, your car, your phone or anything else, would you turn your back on your son and daughter?

**Mr WOOD**—If they are going around using their club colours, using the club, as you have said before, to commit crimes, would that change the situation?

**Mr Withnell**—I believe it would.

**Mr WOOD**—Obviously you cannot speak on behalf of the club but, from your history of being a club member for over 25 years, if that has occurred, have they been asked to leave the club?

**Mr Withnell**—Most people who conduct themselves like that are not really held in very high esteem. It is not very individualistic and honourable as a man to hide behind the club to do your own dirty work. If men in the club have done that and acted in a way that was the best course of action, that is their own decision as men. You cannot equate a club ethos that is based on brotherhood and friendship with the likes of the police force. I might say, though, that in Western Australia half the police have got criminal records and have not been outed. So that is probably not a good example. Maybe politics would be an example. Hang on, that is not a real good example—we have just had a big heap of them up before an inquiry here and half of them got forgiven. Gee, I am not sure of the point you were making.

**Mr WOOD**—The point I was actually making before is: if you have had members of a gang committing serious crime—

**Mr Withnell**—Sorry, Mr Wood; I was just being facetious. I do take the point.

**Mr WOOD**—Are you saying that it would be up to the club as to whether or not they are expelled?

**Mr Withnell**—On principles of justice; equal justice—the same as what applies in any society. I suppose they would have a hearing and—

**Mr WOOD**—The majority of the public view outlaw motorcycle gang members as being blokes who are larger than the average size bloke and they believe a lot of them have been

involved in criminal activity—whether through doing something stupid or something else. The public is actually intimidated by certain members of the outlaw motorcycle gangs. A classic example was in Victoria, when we had former Hells Angel Christopher Hudson, who was obviously out there committing horrendous acts of violence. But are you saying that that is very much in isolation, that that is not the normal way that club members would conduct their business?

**Mr Withnell**—That is such a compound question. I am not really sure how to put it.

**Mr WOOD**—I am just saying that there are people—such as Christopher Hudson in Victoria, who was a member of the Hells Angels—committing absolutely horrendous acts of violence.

**Mr Withnell**—Let me give you an example. We have a policeman here who is an ex-SAS who hired another ex-SAS man to beat his pregnant de facto wife until she aborted the child. What I am saying is that in all sorts of societies—

**CHAIR**—Mr Withnell, would you mind just answering the question.

**Mr Withnell**—I am trying to.

**CHAIR**—Well, you are not. We are trying to ascertain whether or not the actions of, say, Christopher Hudson, or anyone who acts in such a violent way, disqualify them from membership of one of the clubs?

**Mr Withnell**—I am not a Hells Angel; I am a Coffin Cheater.

**Mr WOOD**—From the Coffin Cheaters?

**Mr Withnell**—It would have to be taken on its merits. It would have to be decided on its merits.

**Mr HAYES**—I want to ask about the structure. Apart from riding motorcycles presumably for as long as you have, I have not had an association with clubs. Can you tell me a little bit about your structure? How is it that one joins?

**Mr Withnell**—As I said earlier, if you have a Harley Davidson, you come down and have a beer—

**Mr HAYES**—I do not have a Harley Davidson, so I am not in. But it is not just a matter of going down and having a drink, is it? Can you tell us about being a prospect or a nom? How long does that go on for in the Coffin Cheaters?

**Mr Withnell**—It could go on for a couple of years or it could go on for 12 months. There is no set term. People look for a strong individual, a strong character. They do not want people who are weak individuals or those who are looking for a free ride or a free lunch or something like that. Basically, you hang around and you nom up—you become a nominee.

**Mr HAYES**—The big attraction is the ride itself—getting out with the mates and riding.

**Mr Withnell**—Yes.

**Mr HAYES**—So why is there such a protracted period involved in being a nominee to join the club?

**Mr Withnell**—Because it is so fiercely individualistic. You people are being misfed information all the time. You live in a world that—

**Mr HAYES**—Tell us.

**Mr Withnell**—You live in a world that is highly structured. Are you with me? You live a linear world; at the top you have God, then you have the king, you have George Bush, then you have all the next people in the structure, right down through the popes to the creatures that work on the earth and the creatures that crawl under the earth. You have got a different structure than we have. We have a loose hegemony, if you like, where you have got a whole lot of strong blokes, and the politics can change overnight. All of a sudden, overnight, the whole politics can change. I suppose it is a bit like in parliament—suddenly, who has got the numbers?

**Mr HAYES**—Do you elect people into positions?

**Mr Withnell**—People volunteer for positions. For example, if you are going to organise a run, different guys will say, 'I want to organise this run and the next run,' and then someone else will disagree and say, 'I want to organise the run,' then there will be an argument over that, and the run will get held up because they are arguing over it.

**Mr HAYES**—Who determines who is going to be allowed in and who is not allowed in?

**Mr Withnell**—It is a vote—how you feel about that person—and it has got to be a majority vote to get in.

**Mr HAYES**—And, presumably, if you are going to get rid of somebody, you also vote to have a bloke expelled?

**Mr Withnell**—Yes.

**CHAIR**—So you can have a period out in the cold, can you?

**Mr Withnell**—Yes. You can have a period where you are chucked out. You can live through a period out in the cold. Once again, it is a bit like in your own family. You are not going to expel your son or daughter for doing something, but if they do something that is that inherently wrong or that you feel is morally wrong within the family—you know yourself that there are husbands and wives who do not talk to each other for 12 months because they are dirty on each other.

**Mr WOOD**—Have you ever had a falling out with the Coffin Cheaters where you have been expelled or had to leave for a period of time and come back?

**Mr Withnell**—No.

**Mr WOOD**—Have other members in recent times?

**Mr Withnell**—No. Normally if you are going to get expelled you hit the road. But there are times when you can fall out with people and you think, 'I just don't even want to be with that crew.' You will not do this or do that because the politics, the balance of power, have changed. You have got guys doing this who did not believe in that, and now they believe in that and then tomorrow they believe in this. It is the same as a political party.

**Mr WOOD**—What would be the outcome if someone from the Coffin Cheaters joined another club? How would the club members accept that? What are the ramifications if someone does—or if they have done—that? I assume they would not be too popular if they had—

**Mr Withnell**—We have not had it happen. None of our guys have done that. That is hypothetical.

**CHAIR**—We will just have a few more questions, because we are going to have to wind up, Mr Withnell. How many chapters do the Coffin Cheaters have in Western Australia and in Australia? Do you know the numbers?

**Mr Withnell**—I would not know the numbers for Australia, but in Western Australia there—

**CHAIR**—Do you have any overseas?

**Mr Withnell**—Yes.

**Mr WOOD**—How many are there in Western Australia? Four? Five?

**Mr Withnell**—There are five.

**CHAIR**—How many are there overseas?

**Mr Withnell**—I would not know.

**CHAIR**—Do you know where they might be overseas?

**Mr Withnell**—Norway.

**CHAIR**—So there could be a number of chapters in Norway?

**Mr Withnell**—Yes, there could be.

**Senator PARRY**—Does each chapter talk to each other on a formal basis? How do the chapters relate?

**Mr Withnell**—Once again, it is pretty informal. It is meant to be formal but it is pretty informal. That is the joke when you talk about bikers being organised crime. We look at ourselves as being disorganised. As I said, people keep trying to fit this frame on us—there is

God, there are the presidents and there is everyone under them. Of course, that is the world that other people live in, and they say, 'No, those guys couldn't live in a world unless it was like something written by Hunter S Thompson. There has to be an el presidente—there has to be.' Are you with me? But it is not like that.

**CHAIR**—Would the Coffin Cheaters' structure be a bit different to other motorcycle gang structures in terms of management, control, leadership?

**Mr Withnell**—We might be, but I am not really sure. I think most of them are a bit like us. There would probably be a couple of clubs where there is someone like an el presidente in charge, but I think most of them are like us. It is very hard—

**CHAIR**—A sergeant-at-arms and all that.

**Mr Withnell**—A lot of those are titles, though, too. A lot of those are not really—

**CHAIR**—Do you have those titles in your club?

**Mr Withnell**—No, we do not.

**CHAIR**—That is unusual, isn't it?

**Mr Withnell**—Not really. As I said, for a lot of them who have those titles it is not really a structure as much as an office to relate through. It is not like they say in the books or like the media project it or like a military structure. Once again, it is the structure you members of parliament are used to seeing in your lives, which operates in the military or in the police force or in government.

**CHAIR**—Fair enough. One last question.

**Senator PARRY**—Do street youth gangs have an involvement with outlaw motorcycle gangs?

**Mr Withnell**—Not that I know of.

**Senator PARRY**—It was suggested to us in evidence that you might act as mentors to wayward kids on the streets and in small gangs. Is there a mentoring role that your clubs would play?

**Mr Withnell**—The only way I can reply to that is to say that I probably see about two widows, two grandmothers, about 10 orphans and about 30 kids a week who I have to mentor. I can assure you I am not saying to them, 'Get out there and do crime.' I can tell you that.

**Senator PARRY**—But I am just saying: do you have interaction as a club on a regular basis and are you mentoring and helping these kids?

**Mr Withnell**—No. That is another myth. If you talk to someone, all of a sudden there has to be this conspiracy. If you have a conspiracy then you can justify more men to watch. 'We're not

going to catch it; it's not going to happen; it's not in the frame. But if we watch it long enough and feed it and send someone over with some drugs it might happen.' It is a bit like the La Rosa case. First of all they could not get the laboratory equipment, so they supplied them with laboratory equipment. Then they could not get the precursors, so they supplied them with the precursors. Then they could not get the stuff to make the drugs, so the police got it in from India. Then it got seized at customs, so the police had to get it out of customs and give it to them. Finally they could cook some drugs—and guess what? That crime would never have happened otherwise. All I say is that people look. They go, 'Quick, let's spin up a story about this. This will get me a desk allowance and a bigger department.'

It is like the old gun in the handlebars. We got a copy of that when it was first sent from the Federal Police in Darwin to the Federal Police in Canberra and the phone number was one digit different on the two faxes and it went to Channel 10 in Canberra. A reporter from Channel 10 gave it to me. It is the old shotgun in the handlebar trick. You come down the road, you see your enemy and bang, you shoot him. That policeman was asking for another three policemen to be seconded to him and he actually asked for a desk allowance so he could get more office equipment. No gun ever existed—there is no such thing as the gun in the handlebars; it is straight out of Maxwell Smart. That is what I am trying to say with the street gangs. The police perceive something; they say, 'This could happen.' It might happen—don't get me wrong. But they go, 'This is going to happen. Right, quick, we need more men. We need more money. Uh-oh, it's not happening. Okay, how can we beef it up a bit? Look, you know a drug supplier. Send him around to that kid and get him to drop some off.' They create crime to create jobs.

**Mr HAYES**—How many clubhouses do you have in Perth?

**Mr Withnell**—Just one. There is a second chapter in Fremantle and they have one.

**Mr HAYES**—Is it fortified?

**Mr Withnell**—No, it is not, but the description of fortified is very vague. Fortified is anything that impedes entry, such as a door handle. A door handle is fortified under the Western Australian act. Heavily fortified is if it has a lock on the door handle.

**Mr HAYES**—Your clubhouses are not fortified?

**Mr Withnell**—If you went to our place, it looks wonderful in photos, but you have to remember it is built up at the back and there is a retaining wall. Go down the side and it is an asbestos fence. You could lean on it and it would fall over.

**Mr HAYES**—Just for the record, you are saying it is not fortified.

**Mr Withnell**—To appearances it is built on a road like that, with a huge retaining wall and up in the air—it looks huge. But you know what? It has an asbestos fence down the side and you could just walk through the doors.

**CHAIR**—Thank you, Mr Withnell. There are no further questions. I thank everybody for coming along and giving evidence today. I now declare this hearing of the Parliamentary Joint Committee on the Australian Crime Commission adjourned.

**Mr Withnell**—Thank you for giving me the opportunity.

**Committee adjourned at 3.03 pm**