COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

JOINT COMMITTEE ON THE AUSTRALIAN CRIME COMMISSION

Reference: Legislative arrangements to outlaw serious and organised crime groups

MONDAY, 29 SEPTEMBER 2008

SYDNEY

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JOINT STATUTORY

COMMITTEE ON AUSTRALIAN CRIME COMMISSION

Monday, 29 September 2008

Members: Senator Hutchins *(Chair)*, Mr Wood *(Deputy Chair)*, Senators Barnett, Fielding, 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, Ms Ley 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 12.35 pm

WILLIAMS, Professor George John, Private capacity

LYNCH, Dr Andrew, Director, Gilbert and Tobin Centre of Public Law

McGARRITY, Ms Nicola, Director, Terrorism and Law Project, Gilbert and Tobin Centre of Public Law

CHAIR (Senator Hutchins)—I declare open this public hearing for the Parliamentary Joint Committee on the Australian Crime Commission. This is the third hearing for the committee's inquiry into the legislative arrangements to outlaw serious and organised crime groups. 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 that all evidence be given in public, but under the Senate's resolutions witnesses have the right to request to be heard in private session. It is important that witnesses give the committee notice if they intend to ask to give evidence in camera. If a witness objects to answering a question, the witness should state the ground upon which the objection is taken, and the committee will determine whether it will insist on an answer, having regard to the ground which is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request may, of course, also be made at any other time.

Before I welcome our first witnesses, 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. The resolution does not include questions asking for explanations of policy or factual questions about when or how policies were adopted.

I welcome representatives from the Gilbert and Tobin Centre for Public Law at the University of New South Wales. Do any of you wish to make any comments about the capacity in which you appear today?

Prof. Williams—I also appear in my capacity as the Foundation Director of the Gilbert and Tobin Centre of Public Law.

CHAIR—Thank you. I invite the people appearing before us to make a brief opening statement, at the conclusion of which I will invite members of the committee to ask questions.

Dr Lynch—All three of us will make opening statements, but Professor Williams will start first, followed by Ms McGarrity. I will conclude.

Prof. Williams—Thank you for the opportunity to participate in this inquiry. What I am going to talk to briefly is the question of justification and the circumstances in which it is appropriate to enact laws that criminalise behaviour on the basis of group activity. At the beginning, I want

to recognise that this type of classification under criminal law is unusual and it is also seen as a departure from normal law-making processes in these areas. Indeed, it is a major step to ever impose a sanction not on individual culpability but on the basis of membership or status in regard to a group. It is a significant step to take to move from individual responsibility to group based sanctions. That is because people can potentially be jailed for mere membership of an organisation rather than other forms of individual culpability. You can also have the issue that people can be jailed not because of their own actions but because of the criminal actions of other people who are members of that group.

That said, we do recognise that there are circumstances where it is appropriate to have group based sanctions in the criminal law. There are rare occasions where we recognise this is necessary. A clear example of where we see this as being necessary—and we have written about this—is in regard to antiterror laws. We say that the key role played by organisations in the formation of terrorist intent, and also the need to prevent terrorist acts from occurring, does justify proscription in that context.

With that background, as to justification I just want to make three quick points. The first point is that we believe that further group based sanctions for other forms of criminal activity should only be justified where there is a compelling case to do so. There should be no easy path to group based sanctions. Indeed, there should be a very high threshold to justify, in every case, why there should be a group based sanction and why other offences such as conspiracy are not sufficient.

The second point is that we would argue strongly that the committee should not easily use the terrorism context as a model within which to base any group based sanctions under the criminal law. The terrorism proscription model is an entirely different context. It is also based on an entirely different types of criminal activity based as they are upon questions of religion, ideology and the like. There are also specific aspects of the antiterror laws that simply make them an inappropriate model in this context.

The final point is that we believe these sanctions, to the extent that they can be justified, should be dealt with on a state-by-state basis. It is our preferred approach to see them targeted specifically to the individual circumstances of the state, where there may be justification for a group based sanction. It is too blunt an instrument to legislate for these matters nationally when, in fact, there may not be any compelling justification in one state as opposed to another. Making the laws at the lower level of the Federation ensures that their harm is minimised and that they are limited only to the justified need. That is all I have to say.

Ms McGarrity—For the reasons given by Professor Williams, we think it is not appropriate to take the path of proscribing groups as being organised crime groups. However, the next question to address is that, if this path is taken, we need to carefully examine the process by which that proscription actually occurs. The pre-emptive nature of proscription, and the possibility that it can have an impact upon fundamental rights and freedoms that are taken for granted in a democratic society, means that there needs to be a high threshold or a strict standard imposed in this process.

In dealing with the terrorist organisations provisions of the Criminal Code, both the Security Legislation Review Committee and the Parliamentary Joint Committee on Intelligence and

Security focused on one particular question, and that was the issue of who the decision maker should be. They noted three different options. The first was a judicial decision-making model, the second was an executive decision-making model and the third, which they did not deal with in any substantial detail, was an option whereby an independent committee or group should be the decision-making body. We believe that the question as to which one of these decision-making models should be adopted is finely balanced. However, for much the same reasons as we think that, in the terrorism context, an executive decision-making model should be adopted, we think that that same type of model should be adopted in the context of organised crime groups—if it is decided that proscription is an appropriate measure to take. This is predominantly because of the need, in proscribing a group, to consider a range of policy factors and also to ensure that the decision-making body is accountable to the parliament and also to the people.

Still, it is imperative that there are a number of checks and balances on the executive's decision-making discretion—and this has been the focus of most of our research in the terrorism context. I will just point out what a couple of these checks and balances could entail. The first one is that there is included in the legislation a series of detailed criteria to govern the exercise of the executive's discretion. This is important to ensure not only transparency but also effective review of that decision. One of the criteria that we suggest would be appropriate in the organised crime group context is that there be consideration of why, or whether, the ordinary criminal laws are insufficient to deal with that particular group. The second one is the establishment of an independent advisory body not to make the decision but to advise the executive as to how that decision should be made. The third and possibly one of the most important mechanisms, which is lacking in the terrorism context, is a mechanism for public consultation prior to the making of a decision and also for there to be a regime for procedural fairness to be given to the group and also to any identifiable members of the group.

However, the most important means of checking the discretion of a decision maker is obviously the existence of review mechanisms. In the South Australian legislation that has been enacted in relation to organised crime groups, only two mechanisms of review exist. The first of these is a process of self-review, whereby the minister can revoke a declaration that is made at any time. The second is some established mechanisms for review by an independent judicial officer—a retired judicial officer—to consider the operation and effectiveness of the laws as a whole.

There are two other important mechanisms which, we suggest, should be included in any proscription regime. These are, firstly, review by the parliament. The reason this does not exist in relation to the South Australian legislation is that, in South Australia, proscription is done by way of declaration. We suggest that a more appropriate process to adopt would be that which exists under the terrorism laws—that is, the proscription should be done by way of legislative instrument. This would obviously give the parliament a means of disallowing the regulation. The final mechanism is the mechanism of judicial review. Judicial review is expressly excluded under the South Australian legislation. There has also been some debate as to the scope of judicial review in relation to the terrorism laws, particularly in relation to whether procedural fairness is required to be accorded. We suggest that any legislative regime should include an entrenched model of judicial review. Thank you.

Dr Lynch—Professor Williams has spoken to our submission on justification, and Ms McGarrity has dealt with process. I want to conclude by making some simple points on the

consequences of outlawing organisations—mainly through offences determined by status or association or relationship but also, since it arises directly under the South Australian legislation to which reference has been made, via control orders. Turning to membership first, we note that the submission of the Attorney-General's Department reveals that only under Hong Kong's equivalent legislation is there a pure membership offence without some more active role being required. The South Australian law criminalises association, rather than membership directly, but it is clear from that act that identification of members of the outlawed group is still required.

In our submission we highlighted the problems which inhere in criminalising membership per se. Unlike Australia, comparable jurisdictions do not attempt to do this in respect of terrorist organisations. The Parliamentary Joint Committee on Intelligence and Security has in fact recommended that the membership offence at section 102.3 of the Criminal Code be replaced with an offence of participation in a terrorist organisation. We also note the view of the Australian Crime Commission itself, in its submission to this inquiry, that efforts to prove membership of or participation in a specified organised criminal group risks diverting law enforcement away from practical intervention and prevention strategies. The conviction of some individuals for membership of a terrorist organisation in the recent Benbrika trial in Melbourne does not alter our view of membership offences. The fact that some of the accused were convicted on this charge while five persons were not, after the preparation of the case over many years and hearings over several months, only supports our view that arresting and prosecuting for membership per se is worryingly complex and very predictable.

As for criminalising association, we pointed out in our written submission that the Security Legislation Review Committee had recommended that that offence, in respect of terrorist organisations, should be repealed. While the Parliamentary Joint Committee stopped short of that, they certainly acknowledged the criticisms of that provision. The problem with any association offence, particularly that which now exists in South Australia, is that it does not target culpable conduct but criminalises personal associations. Not only is this concerning from a civil liberties perspective but it has a distorting effect on the focus of policing. In the context in which we work, which is antiterrorism regulation, we need only point to the outcome and cost of the Haneef investigation. But we also understand the comments of the ACC, in their submission, to which I referred earlier, as being in the same vein.

Lastly, a variety of predictive civil orders already exist in Australia, pioneered largely at the state level, with the best example being those available for convicted sex offenders. But, in aping the Commonwealth scheme for terrorism control orders, the South Australian parliament has taken these kinds of orders to a new level. Allowing control orders against individuals simply on the basis of membership of a declared organisation is an extraordinary extension of the regulatory state. Adding an element of criminality to the criteria for making such an order might seem to strengthen the justification for them but the problem is that they are still clearly designed to avoid the rigors of a criminal trial with the appropriate burdens of proof.

On this note we return really to where we began which is to say that, absent of the possible consequences which accompany terrorist activity, we query the justification for creating a legal regime at the substratum of the traditional criminal justice process to deal with serious and organised crime. Thank you.

Mr WOOD—I have a question for Professor Williams. I assume you have had a good look at the South Australian legislation. Is it constitutional in your opinion?

Prof. Williams—Which particular part of the legislation are you referring to? Certainly, I am aware of the legislation although I do come primarily from the terrorism context as do my colleagues. I know also that some of these arguments have been put or suggested about the South Australian legislation but I suppose, again, it just depends on which aspect you are asking about.

Mr WOOD—Whether it be control orders or declaring organisations, do you have concerns about it not being constitutional?

Prof. Williams—I can put it this way because obviously you could go on a long time about this legislation and this question, but my view is that it would be hard to mount a successful argument to have the South Australian legislation struck down. I cannot give a conclusive answer because it is very difficult to predict the High Court on questions like this. The reason I think it would be hard to knock down is that the separation of powers does not apply in South Australia as it applies at the federal level, so it is quite possible to vest powers, which might look more like judges' powers, in executive decision makers. It is also possible to do a range of other things with control orders that you could not possibly do at the federal level. Equally, it is possible at the state level to exclude judicial review to a far higher degree than is possible at the national level because there is no entrenched protection of judicial review like there is under section 75(v) of the Constitution for federal parliamentary actions. So my view is that, irrespective of whether there are bad policy problems with the South Australian legislation, it is difficult to mount a successful case simply because there are so few protections in South Australia that might actually knock this legislation down.

Mr WOOD—At the Commonwealth level, if you had the similar sort of legislation, do you believe therefore that would be unconstitutional and you would have to rely on the states to implement it?

Prof. Williams—I think it would be difficult to enact it in exactly the same form. The legislation is drafted in a particular way for South Australia. It is simply able to ignore those same constraints at the federal level. When you find similar legislation at the federal level for control orders, it is drafted quite differently. Even for preventative detention you actually find that the Commonwealth has had to have the states' support to extend that regime because of the limits of Commonwealth powers. I would be quite surprised if you could have something word for word as you have in South Australia. But I think you could have something that would do similar things in a more constrained way. A related question is whether the Commonwealth has a source of power to do this in the first place and that is questionable. The Commonwealth does not have a general power to pass criminal laws. It does not have a general power to deal with organised crime groups. It has a power specifically to deal with importation offences and the like, dealing in drugs, because of its external affairs and other powers. But unless each and every one of the states referred power to the Commonwealth I would doubt it has the underlying source of power to enact a general scheme of this kind for the same reasons that it cannot enact general schemes of criminal law.

Mr WOOD—You do have that offence of a common-law assault under criminal law.

Prof. Williams—Are you talking about the South Australian legislation?

Mr WOOD—No, I am talking about when the various state police forces actually charge people. There is also the backup offence of a common-law assault. I ask you to correct me if I am wrong, but you can therefore have criminal laws to cover us.

Prof. Williams—If I take your question correctly there are certainly a range of criminal laws including common law which can cover exactly the same sorts of matters that the South Australian legislation covers, but the key difference is that none of those common-law aspects, except for the extent that they might go to conspiracy and the like, cover group based offences. That is why the legislation is quite a stark extension of the current law because it is criminalising on the basis of memberships of groups—I should not say membership—but other aspects of status of involvement with a group and I do not think there are parallels to that extent.

Mr WOOD—Ms McGarrity said that the terrorism model would be the preferred model, but then Dr Lynch said it was not. Could you clarify that.

Dr Lynch—I think we are having a bet each way. Our fundamental position is that the scheme that the terrorism model has established at the Commonwealth level should not be used as a template for extension into areas which are already dealt with by the traditional criminal justice process. What Ms McGarrity was saying was that, if we go down this path, there are valuable lessons to be learnt from the way in which the proscription regime has already been reviewed at the Commonwealth level. We have been wrestling with the question: who should the primary decision maker be? Should that be the executive or should it be the courts? We wanted to flesh out that side of the picture rather than saying that you should be very wary. We have added to our advice to say that, if a process needs to be determined, these are the key things which we think should be observed from what has already gone before.

Mr WOOD—With regard to the review of terrorism legislation which has been discussed, I know there is a debate going on at the moment about whether we need a truly independent reviewer. There have been reports that the Inspector-General of Intelligence and Security may be given the task. What is your opinion on that? Do you firmly believe it has to be truly independent? Why?

Ms McGarrity—We certainly do. We think that the approach that has been taken in the United Kingdom is the preferable approach to take. We should establish a process with a separate, independent reviewer who is outside the regimes that already exist in terms of the review processes that can be undertaken by the Commonwealth Ombudsman and also the Inspector-General of Intelligence and Security. It is to that effect that we provided a submission in relation to the recent independent reviewer of terrorism laws bills, in which we suggest that that is the type of model, with certain refinements, that should be adopted.

Mr WOOD—Would that involve the states rolling out legislation similar to South Australia's or would it involve the Commonwealth in some way, if it was constitutional, taking it up? Would the independent reviewer have the dual role of looking at the terrorism legislation and also the legislation for outlawing gangs? Would that be the same person or could you have two independent reviewers?

Dr Lynch—We would be wary of muddying the waters in that way. I think the role of the independent reviewer extends well beyond division 102 on the proscription of terrorist organisations. If that office is created along the lines which have been proposed, that would really be a roving brief across all the various aspects of Australia's antiterrorism legislation. That is a significant job in itself. Also, that legislative scheme is so unique that I would be very hesitant to suggest that that office could take on additional responsibilities outside of the terrorism sphere.

Mr HAYES—Dr Lynch, one of your concluding statements was that you saw the South Australian model as probably being designed to avoid the rigours of a criminal trial. I am not sure I entirely agree with that, but I think I understand where you are coming from. I imagine you would probably have a similar concern about the application of the coercive powers of the ACC based on that same proposition you have advanced. Is that right? If you concern is that the South Australian model was designed to avoid the rigours of the normal processes of a criminal trial, do you have the same concern about the application of coercive powers in terms of investigative approaches to serious and organised crime?

Dr Lynch—As we said as a caveat to our written submission, none of us is a criminal lawyer. We come to this inquiry as public lawyers who work at the intersection of constitutional law and terrorism. Coercive powers towards an investigative purpose do present their own particular problems and challenges, but I think there is a far more acceptable rationale. I am looking at section 14 of that South Australian legislation right now. One of the criteria for a court to consider in making a control order is whether the person engages in or has engaged in serious criminal activity. The statute blatantly says that serious criminal activity can give rise to this kind of judicial response with a completely different threshold—a much lower one—or it can give rise to a traditional prosecution. I think those kinds of situations are the ones that are the most concerning—where there really is a fork in the road. Based on that part of the criteria that attach to conduct, you can have a control order simply by associating with a member of a declared organisation. But our fundamental view is that, if there is conduct involved and it meets the description of 'serious criminal activity', a prosecution should be brought.

Prof. Williams—I also see a fundamental distinction between, on the one hand, coercive investigatory powers and, on the other hand, proscription style powers. The reason is that, even where you have coercive investigatory powers, particularly those of the ACC, you do have protections against self-incrimination and the like, and they leave the final decisions on all key matters to be made by courts and juries. On the other hand, where you have proscription, there is actually the power for key matters to be pre-decided by the executive—most importantly, the status of an organisation. The executive can predetermine that an organisation may have been involved in criminality—in a way that can be decisive in follow-up actions against individuals. I do not see any necessary link between those two. I think they need to be approached separately on their merits.

Mr HAYES—We have extraordinary powers in the ACC essentially because there has been difficulty in using normal criminal law to affect, apprehend or prosecute serious and organised crime. Having sat through proceedings in South Australia, I understand, from their government's perspective, that there is also a view that they are not in a position to bring about prosecutions in relation to serious organised crime simply by relying on the state's criminal law. I know the lawyers have had a slightly different view on that down there, particularly the Defence Lawyers

Association. At what stage do we recognise that there is no overall winner in terms of the prevention and cessation of crime? If we allow the legal approach to stand in every crime, on occasions there will have to be a victim. Is what they are proposing in South Australia a mechanism for criminal avoidance?

Dr Lynch—The preventive aspect is very clear. In that sense, it borrows directly from the terrorism legislation, where the focus, very understandably, is all about prevention. Deterrence and the traditional focus on criminalising acts, with a view to mopping up afterwards, is not where the game is in respect of terrorism laws. Returning to Professor Williams's opening remarks, what distinguishes terrorism from every other crime is the scale of the harm that you are trying to prevent. That is not to take away from the effects of serious and organised crime in Australia but it is to suggest that these two cannot simply exist on an equivalent plane. At the same time, we do recognise that there is a worldwide trend towards a preventive model of criminal justice. Criminal justice itself is facing challenges in all sorts of jurisdictions in respect of serious criminal activities like this and also incredibly minor activity. In the United Kingdom they have antisocial behaviour orders to deal with what we would regard as very minor misdemeanours. In the United Kingdom in particular, but also in other jurisdictions, they are increasingly resorting to the use of civil orders to deal with the challenges of the traditional criminal justice process. At some point there must be some way in which we can develop a sophisticated approach to preventive justice, but we would put it to you that this South Australian legislation is not a sophisticated approach to that problem.

Mr HAYES—I am not arguing in support of it. It is a proposition that has been put forward.

Dr Lynch—No. I suppose we are just clinging to it because it is the only legislation we have really got before us.

Mr HAYES—That brings me back to Professor Williams. On your third point you indicated that, should there be an established justification for such measures, they should at least be considered on a state-by-state basis. I seriously question that as a real response to law and order. If there were to be any justification for that measure, having regard to the businesslike models that underpin serious and organised crime, would that not just mean that we would export criminal elements from one state to another?

Prof. Williams—Yes, that is a possible but perhaps unlikely consequence. I will elaborate a little on why I argue for a state-by-state approach. The first reason goes back to an earlier question—that is, the source of power. I do not think the Commonwealth has the capacity to legislate nationally for a comprehensive scheme unless all of the states decide to hand over their power by waiver or reference. That is unlikely given how few references have ever been given. There was one in the terrorism context, however, and if that occurred that would perhaps solve that problem.

The second issue is that it is not clear to me at this stage that we are dealing with a problem that can be said to exist in equal magnitude across all of the different states. I have read the comments of the Premier of South Australia as being about a particular magnitude of a problem that is not replicated universally in all of those other places. If it is not true that we have a problem that exists in all of those jurisdictions, I am not clear that the justification is there to enact a national law that will cover areas where there is not a problem to the same extent. Given

we are dealing with exceptional types of law-making, my preference is to keep those in the areas—and only in those areas—they are strictly needed. They should not go national unless you are dealing with a problem like terrorism which can be justified as not falling in any particular case and, for that reason, cannot be achieved on a state-by-state basis.

Mr HAYES—I think what you say about the inability of the Commonwealth to make criminal law in that regard is quite correct. That is one of the areas which I understand is being considered for the common codification of our criminal law, which is in effect the establishment of powers by reference. It seems to me that it would be highly improper to think that one state could make out a case solely within the geographic boundaries of any one state. Having regard to the degree of mobility of criminal activity, I imagine the organisations would simply move to the area of least resistance.

Prof. Williams—It is a fair point. I acknowledge the strength of that argument. I simply say that until, on the other hand, this is demonstrated to be a truly national problem, the sorts of laws we are dealing with should not be extended nationally. I think there is a danger. If indeed it is even localised in South Australia, for that time the laws should be kept there; if it does emerge on a larger basis, it should be responded to on that basis. I am concerned about doing so pre-emptively.

Mr HAYES—Ms McGarrity, you mentioned a degree of parliamentary review or responsibility to the parliament in judicial review and the provisions of the enactment of the terrorism laws. Do you think that, if we did go in a direction like that, we ought to have mandated in the proposition appropriate sunset clauses?

Ms McGarrity—Is this for the regulations being made?

Mr HAYES—Reviews and regulations.

Ms McGarrity—In the context of the terrorism laws we have a number of different methods of review. I do not suggest that even they are satisfactory, but one of the main protections that exist in those laws is the fact that there is a sunset clause on each regulation being made. After each two-year period there needs to be another review of whether the regulation should be made and the relisting of that regulation in exactly the same way as it originally occurred.

Having limited experience in the organised crime field and taking this from the terrorism laws, I cannot see a justification for why a different approach should be taken in the context of organised crime, given that there is some acknowledgement even in the South Australian legislation that these groups that may undertake organised crime activities also have other activities that they might carry out. I think, therefore, it is important to have some form of sunset clause built into each individual regulation so that we can test every two years whether that group still satisfies the definition of an organised crime group. At the moment, all that exists in the South Australian legislation is a five-year sunset clause on the legislation as a whole, which I do not think is a sufficiently limited period of time for us to consider whether the proscriptions of each of the organisations are still appropriate. That is one important mechanism that should be included.

CHAIR—I think we have established that there is no specific legislation to outlaw serious and organised crime within the Commonwealth jurisdiction. One would argue that not only is the amount of drugs being sold illegally in this country a national problem but so is the fact that millions or maybe even billions of dollars are being illegally taken out of this country and being used in other parts of the world for infrastructure, gambling or whatever else. What would your approach to that be, Dr Lynch? Maybe we do need a national approach to this problem, because in those two areas of health and money laundering we need something done by the Commonwealth rather than have South Australia and New South Wales do it on a state-by-state basis.

Dr Lynch—I can really only speak to the legislative capacity of the Commonwealth parliament to address that problem rather than any expert knowledge as to the extent of the problem itself. I would agree with Professor Williams in that the source of power is not immediately obvious, though to the extent that it involves transnational organised crime the external affairs power in section 51(xxix) would provide a suitable basis for that. But that would result in legislation which is focused upon organised crime which crosses Australian borders rather than legislation which is just generally cast, as the net is in South Australia. That is often the way with Commonwealth legislation—it needs to speak to the sources of its legislative power, which state legislation does not have to concern itself with. But in that context, if that is the particular activity that is giving rise to concern at the Commonwealth level, that seems to present itself as an obvious support for the enactment.

Senator BARNETT—In terms of the question from Mr Wood about the constitutionality of the South Australian legislation, that was certainly discussed and brought up, and concerns were expressed by your colleagues, as in the Law Society of South Australia and I think perhaps others. If you cannot take it without notice now but if you are happy to take that on notice, being the organisation that you are with Professor Williams's background, it would be of great interest to us if you had a chance to have a look at that.

Dr Lynch—Certainly.

Senator BARNETT—Secondly, I asked a question relating to having a bob each way, as it were. Dr Lynch, you expressed a view that the terrorism laws have certain safeguards and there are key principles injected into that legislation where, for example, the prescribing of the organisation is done by regulation and is subject to disallowance by the parliament. That would be one of the key safeguards, I assume, in your view. But you indicated that, because of the severity of the crime, this would not suffice, in your view, to match it with the terrorism laws. So is that the only difference? Is it the severity of the crime? You think it is okay to have certain safeguards and certain principles applying to our terrorism laws but the same safeguards and the same principles should not apply to the serious and organised crime legislation that we are looking at as a committee because the crime itself is not severe enough? Can you just clarify if that is the case that you are putting to this committee?

Dr Lynch—I apologise if we conveyed that impression. I think I can speak for myself and my colleagues that our position would be that we point only to the difference in consequences to highlight that the antiterrorist proscription regime was introduced in Australia as an extremely exceptional enactment, and that can be justified given the consequences of a terrorist attack and the need to focus entirely on preventative measures. What we were simply saying about serious

and organised crime is that, although the consequences of that can also be very far reaching and extremely damaging in the community, it does not have that immediacy or potentially catastrophic impact.

The slide from one exception to create another exceptional regime is something we queried. To the extent that would affect safeguards, we would argue that it would not and that indeed the safeguards need to be strengthened in line with the reports which have been issued so far in relation to the proscription regime under the terrorism laws. We would look for matching safeguards in any Commonwealth scheme to deal with serious and organised crime.

Senator BARNETT—That is where I wanted to pin you down, if I could. The same safeguards and principles that apply to our terrorism laws should apply to these laws if we go down the track of having national legislation?

Ms McGarrity—I think that the safeguards that exist in the terrorism regime should be strengthened in relation to any other regime that we create. I think there are some problems with the terrorism laws as they exist at the moment as there are some gaps in the safeguards that exist. We can learn a lot from the parliamentary committee reviews and independent reviews that have been done of the terrorism laws. In creating any further regime we can look to what those particular committees thought would be appropriate safeguards. One example might be judicial review. The terrorism proscription regimes have some limits on judicial review. There is no mention of judicial review in the proscription regime. In the past there has been some commentary amongst members of the executive about whether judicial review is to be permitted on the basis of the failure to provide procedural fairness. That is one possible safeguard that should be included in any future proscription regime. What we are really saying is that we can learn from the terrorism laws how to create a stronger and safer regime to prevent any abuses of power in the future.

Senator PARRY—My questions will be brief. You mentioned that you can only justify the laws prohibiting association in a compelling case. What is a compelling case?

Prof. Williams—For a compelling case I would be looking at particular cases where the existing criminal law was not sufficient but there was obviously criminality or other conduct involved that meant that we needed to do better. I would want to know why the current law was insufficient—whether it was because of evidentiary or other concerns or because of the nature of group activity. The unworkability of the existing law would be one major factor. The second factor would be that, in this case, I would need to be clearly satisfied that the type of activity we were dealing with should be dealt with on a group rather than individual basis. This may well fit into that category, given the type of contact we are talking about—but it often does not. People can be together in groups without having the necessary common purpose that means they should be lumped together for the purposes of criminal culpability.

I would also look at the issues of safeguards and the like. They do, for me, relate to the justification. Unless you have those there, I think the justification is weakened. The evidentiary concern in particular is the one I would stick with, and I also say that that is one that is certainly out of my expertise, because that requires a careful analysis of what has and has not worked under the prior law.

Senator PARRY—So are you purporting that there is no gap in legislation, particularly in South Australia, that warrants the new legislation?

Prof. Williams—That I just do not know. I do know that there are a range of sanctions that could be applied. We are talking about laws from the ordinary law of assault through to other offences dealing with drug and related offences. There are even offences, like conspiracy, that could cover group based activity. There is a regime there that theoretically can apply. Indeed, these group based offences do not usually purport to add much except more effective enforcement. But that really comes down to the operational level and people who have worked in the field and lived with the current law. I simply have not. I do not have a view on that basis, but I do acknowledge it is probably the most important question that needs to be asked when dealing with justification.

Mr HAYES—Despite its importance, you have not investigated whether there is or is not a gap?

Prof. Williams—No, I have not. It falls out of my expertise. I also say that I think it is a mistake to think that lawyers can always give you the answers to these types of questions. The law is obviously central, but for me a lot of it comes down to talking to police officers and other people involved with the enforcement of the law. Often the law may look okay but will not be because of its operation; equally, there may look to be legal problems that people on the ground have been smart in getting around but, in fact, it works fine. To answer those questions you need hard evidence from the ground, not from people like me.

Senator PARRY—That is a very honest answer. Thank you for that. Are you familiar with the consorting laws of the past?

Prof. Williams—I know of them, but I am not an expert in them.

Senator PARRY—There was no public outcry when consorting laws were running hot a decade or two ago. This just seems to be a more sophisticated type of consorting legislation. Have you no comment on that?

Prof. Williams—I think it goes beyond being more sophisticated. I think this is a broader scheme and, in picking up on some of the themes in the antiterror laws, it has obviously alerted people more generally to the issue of group based defences. The more you do this, the more people get worried that we are perhaps normalising these types of offences and they are moving from being exceptional to being more normal offences. That would be of great concern because these should not be normal offences; they should be exceptional, given the consequences for people, including people who may not have been otherwise criminally involved but who are caught up with other people and other people's actions. I cannot explain why there has not been an outcry over the other laws to the same extent except that they are a bit different, and I think also it is a reflection of the times in which we live.

Senator PARRY—Ms McGarrity, you mentioned, in your third point in relation to checks and balances if we move into some form of legislative framework, public consultation. I presume that is prior to an order being enacted or whatever mechanism is in place. How would that work?

Ms McGarrity—One of the gaps in the terrorism laws is the absence of any real notification or consultation requirements, with the exception of requirements to consult with the leaders of the states and territories and to brief the Leader of the Opposition. Some of the concerns that have been raised in relation to the terrorism laws are about members of the community—

Senator PARRY—Can I stop you there. So your public consultation is only in relation to the framework of the legislation?

Ms McGarrity—No, it is in relation to the making of a regulation. What we have seen in the terrorism laws is that many members of the community lack an understanding of the manner in which the regulation is made. They lack a sense of ownership of that regulation. That has led to a feeling, particularly amongst Muslim communities—and I believe that, in the organised crime group, you could understandably see it extending to members of bikie gangs, who may have a similar sense—that they are being unfairly targeted by the legislation and by the regulation maker. I think you can temper that perception by having a broad consultation process beforehand as to exactly what the role of the bikie gang may be within the community and how the regulation may affect members of the community and also by simply ensuring that community members understand the process of making a regulation. The definition is inevitably going to be very broad, and it should be. However, you need to establish a set of guidelines in the legislation and explain those to members of the public so that they understand what criteria are taken into account in deciding that one group that falls within the definition is proscribed whereas another group that falls within the definition is not. That is what we are concerned with—a transparent process—and the best way of ensuring that is to have a public consultation and notification procedure.

CHAIR—There being no further questions, I thank Professor Williams, Dr Lynch and Ms McGarrity for coming along today.

[1.22 pm]

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

EVANS, Dr Benjamin Gwynfor, Acting National Director, Law Enforcement Strategy, Australian Customs Service

CHAIR—I now welcome representatives from the Australian Customs Service. I invite each of you to make a short opening statement, at the conclusion of which I will invite members of the committee to ask questions. Mr Buckpitt, would you like to go first?

Mr Buckpitt—I thank the committee for inviting Customs to appear at today's hearing. I understand that you will be visiting Customs's container examination facility at Port Botany tomorrow and I believe that this will provide you with an insight into the work that we perform at the Australian border. However, by way of context today, I would like briefly to provide an overview of Customs's role in relation to serious and organised crime. Customs has not provided a written submission to the committee on this occasion, but I note that we have contributed as a portfolio agency to the preparation of the written submission made by the Attorney-General's Department. I would also draw to the attention of the committee the evidence that was provided by Customs in July 2007 when this committee was considering the future impact of serious and organised crime on Australian society, in which Customs discussed in some detail our operational responses to criminal activity.

Customs plays a lead role in preventing the illegal movement of people and goods across the Australian border while facilitating legitimate trade and travel. Serious and organised crime groups pose a significant risk to the Australian border through engagement in the illicit cross-border trafficking of a range of commodities. These include drugs and precursor chemicals, tobacco and cigarettes, performance- and image-enhancing drugs, counterfeit goods, wildlife and currency. People-smuggling also remains an organised criminal activity of key interest to Customs.

Broadly, Customs's role in combating serious and organised crime at the border encompasses the detection and interdiction of illegal movements across the border, investigation of certain border offences and cooperation and collaboration with partner law enforcement and regulatory agencies to disrupt and dismantle serious and organised criminal activity. Customs employs an intelligence based risk-assessment approach to screening cargo and passenger movements at the border. This approach provides Customs with the means to focus our interventions in areas at highest risk from illegal activity. The use of sophisticated detection technologies and capabilities underpins Customs's risk assessment practices. These include the Customs container examination facilities which you will be seeing tomorrow, which integrate advanced X-ray screening technology with physical examination to screen containerised sea cargo, extensive use of X-ray in the air and post environments and deployment of detector dog teams across the Customs operating environment.

Given the flexible, fluid and dynamic nature of serious and organised crime, it is anticipated that Customs's role in detecting and interdicting illegal border movements will evolve over time as new crime types and methodologies emerge. Customs maintains a strong focus on identifying strategic trends which may have a future impact on our operating environment in implementing timely and appropriate policy and law enforcement responses to these trends.

Customs undertakes investigations of serious and complex breaches of border related legislation. A number of these investigations involve elements of serious and organised criminality, particularly with regard to the trafficking of precursor chemicals, tobacco, performance- and image-enhancing drugs, and wildlife. Customs's engagement in cooperative and collaborative partnerships with domestic and international law enforcement and regulatory agencies greatly enhances our role in disrupting and dismantling serious and organised criminal activity. The timely exchange of information and intelligence amongst law enforcement agencies is crucial to counteracting the increasingly transnational and multijurisdictional nature of serious and organised crime activity. Over the coming years, Customs anticipates an increase in the volume of trade and passenger movements across the Australian border in concert with growth in the sophistication and complexity of the serious and organised crime environment. In this context the importance of timely, coordinated and appropriate responses by Australian policy, regulatory and law enforcement agencies to serious and organised crime cannot be underestimated.

Finally, we have one or two remarks. In the context of answering your questions today we will endeavour to provide answers that are appropriately unclassified. However, depending upon the line of questioning, there is the possibility that we may need to make application to provide evidence in camera. Customs welcomes the opportunity to participate in today's hearings.

CHAIR—Thank you, gentlemen. We are going to the seaside tomorrow to have a look at the containers there. Do you have a figure for how many containers that are imported and exported are screened? How much do you seek to screen—80 per cent, 90 per cent, 100 per cent?

Mr Buckpitt—First of all I need to explain some of the different terminology that we use. We electronically profile or screen the information that is received in respect of 100 per cent of containers or consignments moving in and out of Australia. However, in terms of X-ray, which I suspect is what your interest may pertain to, we currently have the capacity to X-ray 134,000 TEU—I will explain what that term means in a moment—which equates to about five per cent of all incoming cargo. TEU is a term meaning 20-foot equivalent units. In the case of a 20-foot container, that is one TEU; however, in the case of a 40-foot container, which is the other main type, that is two TEU. Of that five per cent that is subject to X-ray, about one-tenth of that is subject to some form of physical unpack, which reflects the much more labour intensive nature of what is involved.

CHAIR—Where do you do that inspection? Do you do that inspection out at, say, the port or when the cargo is taken to one of the consignee yards? Is it done at both places? Or is it more likely that, if you suspect something, you will do it out at Port Botany rather than at Enfield or somewhere like that?

Mr Buckpitt—Most of the inspections are undertaken at the container examination facilities—and you will be seeing one tomorrow. We have four such facilities around Australia in

each of the major ports. We also have a few smaller establishments, such as the one at Darwin, which is capable of dealing with smaller volumes through the use of pallet X-ray technology. The other option that is available to us, which is one that might be employed where the risk is deemed to be of a lesser kind, is to evidence the unpacking of a container at a depot. Particularly if we are dealing with lower threats, such as intellectual property, particularly if there are multiple consignments in the one container we might go to the point of unpack and witness it there, whereby the unpacking is done by the staff of the freight forwarder or the deconsolidator.

CHAIR—What about with airfreight? Do you have a figure there as well? You can take it on notice, if you wish.

Mr Buckpitt—No, it is okay. From my recollection, 6.2 million items are currently examined each year. We have arrangements in place with the express carriers, whereby much of their incoming material will be X-rayed in the normal business of processing incoming cargo, using in-line X-ray facilities. We also undertake examination of larger air cargo. In addition to the air cargo examinations that I have referred to, we also examine a large proportion of postal materials.

CHAIR—Regarding exports, say, by airfreight, does that figure include looking for cash, in particular?

Mr Buckpitt—Cash would be one of many items that we could look for but, in practice, the focus of our activity tends to be for explosives where export air cargo is concerned. You might recall the Wheeler review of 2005. The government's response at that time was to provide some additional resources to Customs to enable it to direct greater effort in relation to the explosives threat concerning air cargo which was being exported.

CHAIR—We have been told there has been an increase in transnational crime. Can you provide the committee with an overview or understanding of what it actually looks like. We have been told that these groups are very sophisticated. Can you provide the committee with some examples of this?

Mr Buckpitt—I could provide you with an example, but the information that I could provide of an unclassified nature would be relatively superficial.

CHAIR—If you would prefer to go in camera, we can.

Mr Buckpitt—If you would like an example, yes.

CHAIR—We will go back to that question and we will allow for some more public questions.

Mr GIBBONS—You just gave us percentages for the examination of containers and other vessels that contain imports. Obviously, you examine some, based on intelligence received from other agencies that there might be something of interest in there. For those that are not in that category, how do you determine which ones are actually examined and X-rayed? Is it an ad hoc thing?

Mr Buckpitt—No, not at all.

Mr GIBBONS—Is it from a particular source nation?

Mr Buckpitt—We have profiles in place which look for certain criterion. The types of profiles can be related to specific individuals, so there can be quite specific what are called 'alerts' or 'lookouts' based around names of companies or individuals. However, we can also have profiles that look for particular patterns of goods which might be suspicious or known to us as being suspicious. We also have the capability to identify changes in the behaviour of how importers might normally operate. I could provide you with a much more detailed answer than this but, again, I would like to do so in camera, given that the sort of information I would provide is the sort of information I would not want criminal interests to be aware of.

CHAIR—We will do that at the end of this public session.

Mr GIBBONS—Has there been evidence that organised crime groups or organised gangs are involved in wildlife-smuggling, as you mentioned—both importing and exporting—or is it perhaps just a few individuals?

Mr Buckpitt—I will have to take that question on notice. Certainly, we have seen evidence of it happening in an organised fashion. I will have to take on notice as to whether it is a syndicate involvement or an involvement by individuals. But there are clear patterns of wildlife-smuggling. For example, we are able to predict certain locations and times of the year and directions in which the goods will be going and how they will move them, based upon the types of goods. Where eggs are concerned, obviously, there is a certain breeding period and a location where they would be drawn from and particular modes by which they would move. But, as I say, I would need to take that on notice as to whether individuals are behind those sorts of activities or whether we have evidence of organised criminal groupings.

Mr GIBBONS—Finally, does your organisation have its own investigative department where you might start investigations from the ground up and then pursue it right through to conclusion, including giving evidence in court?

Mr Buckpitt—Yes, we do. The Australian Customs Service has an investigations function that has the ability to prosecute from start to finish in relation to certain illegal acts. The more serious end of criminality will typically see those matters referred to the Australian Federal Police. So in the case of illicit drugs and precursors of any significance they would be prosecuted by the Australian Federal Police. However, other matters—and the example you have just raised in relation to wildlife is a good one—would be prosecuted by the Australian Customs Service.

Senator PARRY—To your knowledge, has any outlawed motorcycle gang infiltrated the Customs workforce by getting someone on the payroll?

Mr Buckpitt—Not to my knowledge.

Senator PARRY—What sorts of mechanisms do you have in place to undertake security screening to prevent this from happening?

Mr Buckpitt—Firstly, at the point of recruitment we require a security clearance for all staff to the level of 'protected'. That security check of itself involves police checks, detailed reference checks. No member of staff is recruited without obtaining those clearances in the first instance. Secondly, we have a framework within the organisation for handling all such matters, including an internal affairs unit, which has the capacity to either investigate matters in its own right or refer matters to policing, such as the Australian Federal Police, where there might be allegations that are sufficiently concerning. The organisation also has quite detailed arrangements in place for ensuring that officers, particularly in operational roles, are moved from time to time. It is the norm for someone to be moved about every three or four years. That then prevents somebody from becoming too close with those in industry who might seek to cultivate a relationship for some nefarious purpose.

Senator PARRY—Apart from the rotation plan, once initial employment has been granted, what about ongoing inspection and checking?

Mr Buckpitt—The security clearance process is renewed from time to time, depending upon the level of the clearance that is required. There is a review mechanism in place that is triggered either by the passage of a period of time since the first clearance was provided or, alternatively, by a move to a position that has a higher security clearance requirement.

Senator PARRY—Can an individual acting alone make a decision to halt, defer, postpone or cancel a single inspection?

Mr Buckpitt—Yes. The way the process works is that the system might identify a consignment that appears to match an electronic profile and then what is called a 'cargo targeter' will need to make a judgement about whether that does or does not warrant inspection. So it is not a totally automated process. The contribution that the cargo targeter will make will often involve researching other systems that are available to us. To give a simple example, it might involve a double-check as to whether a known company really does operate out of an address contained in a particular report that we have on a piece of cargo. If the address turns out to be a valid address then that might reduce concerns around the importation. For example, quite often information that we would receive in relation to a consignment might show the name of a buyer, which might be an employee of the particular company. That particular employee would be unknown to the system, although the company itself would be well known to us. So by the cargo targeter establishing, 'This is Coles; it is not just some individual whom we don't know,' they can quickly form a view that this is a relatively low-risk consignment and therefore it will be acquitted. There is power for an individual to what is called 'acquit' a match. Those judgements are held, though, by a relatively small number of people, who do not actually get physically involved with cargo very much at all. They are dealing with systems and forming judgements about risk all the time.

Senator PARRY—Is there an overall audit conducted either monthly or annually that matches acquittals, or acquitted processes, compares cargo types, individual companies? Is there any internal audit management of that to ensure that there is no irregularity?

Mr Buckpitt—There is an internal audit function within the agency and that involves regular reviews across the organisation. The regular audit or review of the work of an individual does not take place. Having said that, perhaps I should explain. The workload that an individual

targeter would receive is difficult for him or her to control, because the way in which the system operates means there might be 10 targeters working at any one point in time. They will be working through a volume of consignments that need to be examined or otherwise. It is not impossible, although it would certainly be difficult on a consistent basis, for a cargo targeter to go in and find consignments of interest because, typically, they will work through the order of the list. If they were hunting for a particular consignment they would draw attention to themselves by doing so.

Senator PARRY—We will leave efficiency dividends alone until estimates in a couple of weeks time.

Mr Buckpitt—I look forward to it!

Senator PARRY—I am sure you do. Do you see any gaps in legislation affecting Customs operations and, if so, how could it be strengthened particularly in relation to outlawed motorcycle gangs?

Dr Evans—Can I start with a general statement. One of the most important things to remember in considering this question is that the Customs Act is not specifically targeted at organised crime. It is a regulatory act as well as, in a sense, a criminal act. Many of our responsibilities under the Customs Act involve facilitating trade and also regulating trade in the sense of protecting the Australian community from, say, goods containing asbestos, rather than directly targeting criminal behaviour per se. So it would be very difficult for Customs to orientate itself to solely go after serious and organised crime. We have a regulatory responsibility, a facilitative responsibility and we have already referred to our investigative capacity. But that said I think there are some areas where legislation perhaps outside the Customs Act could assist us.

Senator PARRY—In the context of that response we are looking at legislative gaps as one aspect of our inquiry and also at how your framework marries in with having any gaps in a physical sense that we have just explored a moment ago. Finally, is there anything on the legislative front that you feel needs enhancing, improving or adding to?

Mr Buckpitt—I will just comment on a couple of areas in response to your question. The first of these goes to the maritime security identification card, which operates at all of our wharves. The maritime environment is clearly the highest risk environment from a Customs point of view. Whilst we continue to seize, detect drugs and other commodities of interest to us as an agency in post, aircraft and vessels it is in sea containers that the largest volumes of illicit drugs and precursors, in particular, come into this country. If you look at the methods that are most frequently employed in relation to sea cargo for the purposes of moving illicit goods it comes down to about four methods and, of those four methods, two or three require the direct involvement of support facilitators in the wharf environment. So it is of concern to us in that context that the MSIC arrangements that have been introduced allow for people who do have criminal histories to be employed at wharves. The security checking associated with MSIC applications is not, in our view, a particularly rigorous one. We think that that permits employment at the wharves where there are a substantial number of people who have had criminal involvement or have been supportive of criminal involvement in some way. We think that is one area that needs to be looked at.

Another issue I would flag in response to your question concerns the licensing arrangements associated with brokers and freight forwarders. I mentioned that there were four common methods of illegally bringing goods into the country. One of them is known as the piggyback method. That method operates whereby a criminal entity uses someone else's identity so, effectively, identity fraud in the context of cargo. A criminal will purport to bring in some illicit goods, using the name of a well-known Australian company that has a good trading record, in the hope or expectation that we will treat that as low risk. For that sort of fraud to have any reasonable chance of being effective requires some inside knowledge about how the well-known company might operate. You cannot simply put the name of a big company on your consignment and assume that it will go through. So, again, in the case of brokers and their licensing arrangements there are some checks involved in ensuring that the people who are receiving licences are people of good repute.

However, typically brokerages will employ a number of people who will assist them with such work and the checks do not go to their employees or other people in the industry, particularly in relation to freight forwarders. You might have somebody, who appears to be reputable, receiving licensing, but there is no knowledge on our part as to who they might employ or have already employed. So that is an issue for us. There are concerns about the extent of criminality in some of these areas where freight forwarders and brokers might be operating, thereby giving very valuable inside information to criminals seeking to bring illicit goods into the country.

Senator PARRY—Thank you. I have many more questions and I will stop there. If there is a gap at the end, I will come back.

CHAIR—We may go in camera in a moment.

Ms LEY—I have questions about the new money-laundering act that came in at the end of 2006, which requires somebody travelling internationally to declare bearer negotiable instruments. Given that you could have a couple of these, this big, folded up, at the bottom of your wallet, and that they are very hard to detect, what sense do you have about the efficiency of detecting those? I know it is early days, but how successful do you think it is proving to be?

Dr Evans—We have powers in both the maritime and the aviation environment to question travellers, passengers and crew regarding money, currency and bearer negotiable instruments. We do so on a targeted basis. We may also ask, as a matter of course, when encountering a passenger at the primary line. Our early sense is that we probably need some more work to take place around the volumes that are being moved around in this way. It is highly intelligence driven. As you said, these things are easily concealed and, in looking for these, we obviously cannot afford to search every passenger coming through the airport. So our regime at the moment relies on good intelligence and our powers to question and search travellers, crew, sea passengers where we have reason to do so.

Ms LEY—You could take a long time to answer this, but I do not want you to. What impediments are there, maybe legislative, maybe resources based, that actually stop you, in Customs, doing the job that you know you can do really well? What are the real tensions that you face on a day-to-day basis? Every organisation has them.

CHAIR—Would you rather do that in camera?

Senator PARRY—Or in estimates?

Mr Buckpitt—I probably prefer to do it at estimates, with the advantage of having had a little bit more time to think about how to answer that one.

Ms LEY—I really just meant off the top of your head. I do not want details.

CHAIR—I think Senator Parry will ask that one.

Mr Buckpitt—I could briefly comment. One area that Customs has been seeking additional powers is access to telephone intercept information. That was an issue that came up in the PJC hearing of 2007 where we commented on our desire to have more ready access to those sources of information. It is a source of information which police forces commonly have. Customs does not. We have to work through other law enforcement agencies to get that sort of information. When you are trying to prove intent, the value of TI cannot be understated.

Mr WOOD—Dr Evans, I just thought you said that part of the role of Customs was not investigative, and now you are saying you want investigative powers.

Dr Evans—Access to the product of investigative powers. I think this relates to both your question and Ms Ley's. There is a tension in Customs between our facilitative requirement and our requirement to prevent the border being utilised as a place where crime can take place. Mr Buckpitt was making the point that, when we do conduct investigative activity, it would be extremely useful for us to have access to the raw product from telephone intercept. At the moment we can access telephone intercept product when we are working on a joint operation with the Australian Federal Police. For serious offences we can also get access to telephone intercept product from, say, the Australian Federal Police but they are required to sanitise it before they pass it to us. Our concern obviously is that we have a different understanding of the border environment. We have a different understanding of the sorts of crimes that can utilise the border and it would be useful for us to see the product in its unexpurgated form.

Mr WOOD—Have there been budget cuts to Customs recently and, if so, what effect has that had?

Mr Buckpitt—The Australian Customs Service has been subject to the same efficiency dividend as that of other government agencies—that is, a two per cent reduction, as well as the 1.25 per cent efficiency dividend. The impact has been that we have had to reprioritise what is important to us. In giving effect to that, the organisation has had to take a number of slices off certain areas. In some cases we have had to review certain functions with a view to making some greater efficiencies. One area of particular review at the moment is our corporate operations area where we are seeking to reduce staffing to give us a bigger dividend.

Mr WOOD—You may want to take this in camera. When we had our inquiry, especially in South Australia and Western Australia, the main focus was on outlawed motorcycle gangs. I wanted to find out, being on the ground there, how much the outlawed motorcycle gangs were involved in serious crime, whether it be importing or exporting—or would you rather take that question in camera?

Mr Buckpitt—I will take that in camera, if you do not mind.

CHAIR—Unless there are any other questions that we can put on the record, this session will now proceed to take evidence in camera.

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

[3.37 pm]

HUDSON, Assistant Commissioner David William, Commander, State Crime Command, New South Wales Police Force

KALDAS, Deputy Commissioner Naguib (Nick), Deputy Commissioner of Police, New South Wales Police Force

SCIPIONE, Commissioner Andrew, Commissioner of Police, New South Wales Police Force

CHAIR—I welcome witnesses from the New South Wales Police Force. Thank you very much for making yourselves available to talk to the committee on what is National Police Remembrance Day. I now invite the force to make a short opening statement at the conclusion of which members of the committee will be asking you questions.

Commissioner Scipione—I might start by referring to this particular inquiry into the legislative arrangements to outlaw serious and organised crime groups. In 2006 New South Wales enacted very strong antigang legislation. The Crimes Legislation Amendment (Gangs) Act 2006 commenced in New South Wales in December and introduced into the Crimes Act 1900 several new offences relating to participation in criminal groups including participating in a criminal group and knowing or being reckless as to whether participation contributes to the occurrence of any criminal activity. That was under section 93T(1). It also included recruiting a person or a child to commit a criminal act under section 351A of the act. Since that legislation has been introduced there have been some 168 people charged with offences under that legislation of which 23 were outlaw motorcycle gang members.

The reforms also introduced specific provisions in relation to assault and destruction of property with the intent to participate in any criminal activity of a criminal group and fortification removal orders, which direct persons to remove or modify any fortifications at the premises intended to prevent or impede police access to those premises. I understand, and I am sure that the committee would be well aware of it, that the South Australia legislation has commenced. It was introduced recently and contains a range of new provisions in relation to combating serious and organised crime groups including the declaration of groups as prohibited groups and the imposition of certain restrictions upon those groups. I think it commenced on the first of this month. We are certainly looking forward to seeing how that operates

Whilst the New South Wales Police Force has antigang legislation, we are committed to continually examining new and improved ways to combat serious and organised crime groups, and we will follow with interest the effectiveness of the South Australian legislation and those measures once they have had some chance to operate. In June 2007 the Ministerial Council for Police and Emergency Management—Police, commonly known as MCPEMP, established a working group to develop a national approach to gangs. At the November 2007 MCPEMP meeting, each of the jurisdictions agreed to review its legislation pertaining to the disruption and dismantling of serious and organised crime and to consider enacting complementary and harmonised legislation to achieve this outcome. This work has been completed through the

national outlaw motorcycle group working party, which I think is currently chaired by Commissioner Hyde.

The New South Wales Police Force is advanced in terms of its operational and legislative response. A key area for improving the national response to organised crime groups would be closing some of the gaps between the jurisdictions, which can be and in the past have been exploited by increasingly sophisticated crime syndicates. In considering any national approach to organised crime groups, we would not support the weakening or the undermining of the effectiveness of the antigang laws in New South Wales. That concludes the submission. I am happy to take questions.

Mr HAYES—Your legislation introduced in December 2006 is very similar to the Canadian model.

Commissioner Scipione—I am not aware which particular model it is that you are referring to. You are not mentioning the American model, RICO, but certainly it is—

Mr HAYES—A model for dealing with organised crime groups themselves.

Commissioner Scipione—I do not have knowledge of the Canadian legislation.

Mr HAYES—What has been the effect of that legislation, apart from the 168 charges, 23 of them motorcycle gang related? Can you give the committee any indication of the benefits, both financial and social, which have arisen as a consequence of that legislation?

Commissioner Scipione—With regard to the operational application of that legislation, I hand over to the assistant commissioner with responsibility as the commander of the state crime command, Assistant Commissioner Hudson.

Assistant Commissioner Hudson—Regarding the 168 people charged, it is true to say that on each of those occasions there has also been a more substantive charge preferred against the same offenders. One of the issues that we have identified is that, through the investigation of organised criminal networks, we are investigating more substantive offences than participation in a criminal group. The charge under section 93T is being preferred in addition to more substantive charges. It is one of the things that we will be reviewing. As the commissioner indicated, we are desirous of seeing the impact of the South Australian legislation. It is one of the things we will take into account in a review of the effectiveness of the legislation as it currently stands.

Mr WOOD—What is section 93T?

Assistant Commissioner Hudson—That is to participate in a criminal group.

Mr HAYES—If the South Australian legislation works as they intend it to work down there, could one of the results of that be a migration of the gang based crime elsewhere, including to New South Wales?

Assistant Commissioner Hudson—It is very difficult to determine what the impact of it might be in South Australia. Obviously it is of concern, if the legislation does work effectively in that jurisdiction, whether organised criminal networks move to other jurisdictions. I think one of the intents of MCPEMP is to have uniform legislation to offset that capability. I am quite comfortable that in New South Wales we have one of the strongest gang and organised criminal network legislations in existence in Australia, but the effectiveness of the South Australian legislation has to be monitored on a number of levels.

Mr HAYES—But aren't crime and those who perpetrate it at that level simply other forms of—illegitimate—business? If the legislation works, if it is too harsh to undertake their business operations in South Australia, would they not move somewhere less threatening?

Assistant Commissioner Hudson—It is quite possible. I cannot pre-empt what might happen in South Australia and where these groups might move. I imagine our responsibility is to make sure it is as difficult as possible to operate in New South Wales—which is our intent.

Mr HAYES—I am not quite sure whether we can fortify any particular state—except yours, Stephen.

Senator PARRY—Pull up the drawbridge!

Mr HAYES—Yes, it has a moat!

Commissioner Scipione—This is why it is important for us to look at a national approach, which is why MCPEMP have taken this on as a project. The reality is that you do not know what you do not know. There could well be a displacement effect. However, if it is done well, if there is some harmonisation across the country and we have some really effective strategies, you might see a very good result. It is often hard to forecast, but I am not sure that that would be a good reason for us not to actually get on with it.

Mr HAYES—That is the point I really wanted to come to. From my perspective, sitting back and seeing our chief law enforcement personnel and agencies all having slightly different views about what is effective and what is not is a source of some concern. There is certainly an argument that we should be apprised of what is considered the best and most contemporary form of regime to be rolled out to combat serious and organised crime. That is going to require states acting in harmony and the harmonisation of some criminal laws. Rather than seeing one jurisdiction going it alone and everyone else saying, 'We're going to sit back and see what's going to occur,' I would like to see people come together on what it is that we need to address in that respect.

Commissioner Scipione—Thank you. I might reflect on that. Bearing in mind that we were, I think, the first state to run with legislation, in December 2006, we have had the benefit of 18 months. We are keen to ensure that we stay contemporary, and if some changes need to be brought to bear then I will take those back to government with a view to enhancing the legislation. I think this is very much a part of the learning process. That is why I think in New South Wales we are well placed. The South Australia legislation is certainly something that is being looked at, because it is a very powerful piece of legislation. Notwithstanding that, we still feel that we need to be doing something now, which is why 18 months ago government did give

us the powers to get on with it. Notwithstanding the suggestion that to sit back and watch is probably not the best approach to adopt, I can fully understand why other agencies across the nation are saying, 'We'd like to see what works and what doesn't work.' I did not think that we could wait that long.

Mr HAYES—There is one other thing I want to raise. Unexplained wealth was raised when we were in Western Australia, and they have pointed to superior legislation now being enacted in the Northern Territory, which is likely to have better results. Is New South Wales looking at a position on unexplained wealth?

Deputy Commissioner Kaldas—Our legislation has been in place for a while and it seems to work pretty well, very much hand in glove with the New South Wales Crime Commission, whom you perhaps heard from a bit earlier. I am not aware of any proposals or any need at the moment to revamp the legislation. But we would certainly look at other models.

Mr HAYES—As I understand it, that is only legislation that is accessed by the New South Wales Crime Commission. It is not for prosecution by New South Wales Police in respect of unexplained wealth.

Deputy Commissioner Kaldas—The majority of confiscation proceedings tend to be mounted through the Crime Commission for us. The result is the same. It is just a question of which agency takes the front foot.

Commissioner Scipione—In fact, they are charged with taking that responsibility and we work with and alongside them. In terms of legislation that mirrors what was proposed in the Northern Territory, I have no advice that suggests that that is afoot here in New South Wales. We are happy with the confiscation arrangements at the moment. Again, this is an emerging field within Australian law enforcement.

Mr HAYES—Some time back—I think almost 13 years back—the Police Ministers' Council did actually resolve to move together in laying the foundation for the common criminal code, and piece by piece of that is being achieved. In terms of serious and organised crime, should we in this committee be looking at and reflecting on what sort of priority we recommend for harmonising approaches to serious and organised crime?

Commissioner Scipione—I think that is a reasonable endeavour. It would be difficult to mount an argument to suggest that we would not look at trying to harmonise on the basis of getting maximum effectiveness, and that is what it is all about at the end of the day. It is trying to put a regime into place backed by legislation that allows us to best control and minimise the effect of serious and organised crime across the nation.

Senator PARRY—Commissioner, you mentioned the fortification removal orders. Were they solely related to OMCGs?

Commissioner Scipione—No, I do not think the law necessarily was prescriptive to OMCGs in terms of the fortification notifications. I think it covers that whole thing.

Senator PARRY—Is it generally only OMCGs that do fortify premises?

Commissioner Scipione—No, drug houses here. We have a number of them.

Senator PARRY—Were all the fortification removal orders complied with, or was there forced compliance?

Commissioner Scipione—There was forced compliance. I am aware of some forced compliance operations—you might know of some more.

Assistant Commissioner Hudson—I do not have the details since it was enacted, but the reality is that we still find fortified premises upon the execution of search warrants, and OMCG clubhouses.

Commissioner Scipione—We forcibly enter it, basically.

Senator PARRY—So you can act the moment you find fortified premises that you wish to enter legally. Do you then just enact the provisions of the removal of fortification order? Is that something that is instant, or is there a delayed process, a court process?

Assistant Commissioner Hudson—It is dependent upon whether we are aware at the time of executing a search warrant or attempting to enter those premises—if we are aware that they are fortified. Sometimes that is not known until we actually try and get in. We come across a large number of premises that for a number of reasons are fortified, mainly in relation to the protection of illicit drug trade.

We have run an operation over the last 18 months named Operation Ranmore in relation to outlaw motorcycle gangs. It has been a statewide operation involving the State Crime Command and local area commands. There has been a high degree of compliance with police entering those premises, without being rejected or finding heavily fortified premises at outlaw motorcycle gang clubhouses. We conduct those operations throughout the state through the local area commands, monitored and coordinated through the Gangs Squad of the State Crime Command.

Senator PARRY—Does the legislative provision enable you to seriously damage a building to gain entry?

Assistant Commissioner Hudson—If necessary, we are allowed to use as much force as required.

Commissioner Scipione—Whatever is necessary to gain entry.

Senator PARRY—With the carrying out of those orders, has this happened on many occasions since the introduction of the legislation?

Assistant Commissioner Hudson—I do not have those details in front of me. I am aware that we have on several occasions, to my knowledge. I do not monitor it on behalf of the state. Obviously I have responsibility for the squads that come under me, but I do not monitor it on behalf of the state. But I am aware that our squads have used the legislation. I could not speak on behalf of—

Commissioner Scipione—Senator, we can provide you with that information. State Crime Command is but one group that uses the general provisions. We have regional enforcement squads which still go after drug houses, so it is dealt with at a number of different levels depending on the classification or the level of activity that you are targeting. But we can certainly make that available, should that be needed.

Senator PARRY—Thank you. I am interested in whether or not now there has been a change of behaviour in relation to the fortification of premises. You are indicating that it is still happening, the fortification is still taking place, but entry is being given more freely, knowing that you have legislative provisions to physically enter the premises. Is that anecdotal? I do not expect that to be a factual answer based on evidence.

Assistant Commissioner Hudson—Of recent times, under Operation Ranmore, we have not experienced a great deal of difficulty in gaining access to outlaw motorcycle clubhouses.

Senator PARRY—With the 168 charges—or 168 people charged, wasn't it?

Assistant Commissioner Hudson—That is correct, yes.

Senator PARRY—Does that represent a significant increase since the laws have been enacted of people in relation to gangs being charged? Was that something you would have expected to occur—a percentage or a number of that magnitude?

Assistant Commissioner Hudson—I am not too sure I understand the question.

Senator PARRY—Has there been an increase in gang related charges in relation to the laws from 2006?

Assistant Commissioner Hudson—Of recent times? Is your question, 'Since 2006, are we more likely to'—

Senator PARRY—Since implementation. Were there gang related charges going along like this and then all of a sudden they spiked, since the introduction of the legislation in December 2006?

Assistant Commissioner Hudson—When the legislation was first introduced—like any legislation that is first introduced, sometimes police are a bit wary to utilise it. Firstly, it is probably an education process in letting them know it is actually available. Police do not flick through the Crimes Act to see what has suddenly appeared in there as a new offence.

Senator PARRY—What is new today!

Assistant Commissioner Hudson—So it is an education process for us, but certainly we have pushed its availability within the State Crime Command and through the Gangs Squad statewide, in *Police Service Weekly* articles, which are distributed statewide, and also nemesis messages via email. They happened towards the end of last year. I think you can see a definite trend that the use of the legislation has been greater once police have become better educated that it is out there and available for use.

Commissioner Scipione—Senator, you seem to be concentrating on OMCGs, so let us stay there. When we put Operation Ranmore together, it was based on the common knowledge and the understanding that we have that you necessarily need to target crime in groups across every level. That means you do not necessarily go after one particular crime type; you deal with it whether it be a licensing matter, a minor traffic matter, a major drug investigation or a firearms offence. You continually go, you concentrate your efforts in that particular space and you remain determined. Part of the effectiveness of the legislation with regard to clubhouses has come as a result of using local government powers. The notion of being able to sell alcohol in premises gives us wonderful opportunities under the licensing legislation. So it is not necessarily linked back to gang legislation per se, because we find that, if you deal with the smaller matters, you often can deal with the bigger matters before they occur, or you can come at it from another direction.

Ranmore has been outstandingly successful, with coordination across the state by the Gangs Squad. Certainly that has been two-way in terms of not only the activity that is going on but also providing intelligence to our police on the ground, working together with local police. When you pull it all together, the results have been outstanding, but that has not been in the exclusive domain of this legislation dealing with serious organised crime gangs.

Senator PARRY—Thank you very much.

CHAIR—Commissioner, I was wondering if you could comment on what the current or emerging trends are in the activities, practices and methods used by organised crime groups. Is there any particular area of concern that the New South Wales Police Force has or other law enforcement agencies should have that is occurring?

Commissioner Scipione—The summary of crime I might leave to the deputy. Suffice to say that perhaps much of what we might like to talk to you about is something that would be better kept within the confines of an in camera session. We would not want to necessarily—

CHAIR—We can go in camera.

Commissioner Scipione—How about I hand over to the deputy, and if we go down that path we can go there.

Deputy Commissioner Kaldas—I will just make some comments and then perhaps Dave can complement them, if that is okay.

CHAIR—What we can do, Commissioner and officers, is that towards the end we will go in camera.

Commissioner Scipione—Okay. If you like, we can leave it to the end and we can talk about it. Thank you.

Senator BARNETT—Thanks for your submission today. I appreciate it. Of those 168 charged under your 2006 legislation, how many were convicted?

Assistant Commissioner Hudson—There have been identified issues with the legislation at this stage. As I indicated before, it will be subject to a review, and a large part of that review will also entail looking at what is occurring in South Australia post 1 September. The offence of participating in a criminal group is normally identified through the investigation of a more serious offence. When we identify that offence and prosecute them for the more serious offence, participating in a criminal group is also a charge that is preferred against them. We have had some experiences where, whilst convicted of the offence under section 93T, the more substantive offence carries a greater sentence and therefore, whilst a conviction is recorded, they are not actually sentenced on that matter. There have also been instances where the charge has been withdrawn and they are sentenced on the more substantive offence, and that is one of the things we will be looking at as part of our review of that particular piece of legislation.

Senator BARNETT—I appreciate that, but I am going to ask the question again: 168 charges and how many convictions?

Assistant Commissioner Hudson—I do not have the exact numbers of convictions with me. I am aware that it is in excess of half of those that convictions have been recorded—

Senator BARNETT—In excess of half—

Assistant Commissioner Hudson—Half of those offences. However, as I said, whether a sentence flows from that conviction is another issue.

Commissioner Scipione—Rather than mislead the committee, I would rather provide you with more accurate information.

Senator BARNETT—You can take it on notice. No problem.

Commissioner Scipione—We will take it on notice.

Senator BARNETT—I have got the legislation here. I only had a look at it today and only perused it. When you do take it on notice, can you identify for us the sections and areas where the charges were successful and perhaps where they were unsuccessful? Under the act, your 2006—

Commissioner Scipione—These charges all relate to 93T.

Senator BARNETT—All relate to 93T.

Commissioner Scipione—Those did. There are other offences that were in excess of that.

Senator BARNETT—If we are all talking about 93T, that would do the trick. We will have a look at that. Thank you. Commissioner, I sense from your evidence and your introductory remarks that a very strong objective of yours to take a national approach and the merit of harmonisation. In that context, can you outline the key difference as you see it between your New South Wales legislation in 2006 and the South Australian legislation?

Commissioner Scipione—I am not an expert on the South Australian legislation. My last briefing on it was at MCPEMP in 2007 in New Zealand. I am mindful that there were some strengths from a South Australian perspective that focused on perhaps the identification of groups, and that in itself was something that we did not have. I am not necessarily sure that that was what we needed. I am more au fait with what we have got in New South Wales. If there is some specific request for us to compare we could, but of course it is probably more appropriate from my perspective that that is a sort of issue that should be dealt with through senior officers group at MCPEMP, which is certainly under Mal Hyde's chairmanship at the moment. The outlaw motorcycle gang working party is going down that path. I have not seen submissions back from them yet. I know that they are either finished or are close but it has not come through to me yet.

Senator BARNETT—We are going to different jurisdictions in Australia looking at their legislation on a state-by-state basis. But because we have got an overarching ambit here we are interested in any national legislation that may be appropriate, or perhaps any cooperative approach. I know you support a cooperative approach with different jurisdictions. Perhaps you can outline for us the key ingredients of the New South Wales legislation that you can in summary advise us how it works. Then we can compare that with South Australia.

Commissioner Scipione—I can, and I guess going down the theme of what we have already agreed to, the key offences that were created that I touched on in my submission are the notion of participation in a criminal group—

Senator BARNETT—As opposed to membership of it.

Commissioner Scipione—Correct. This is participating in a criminal group knowing or being reckless as to whether participation in that group contributes to the occurrence of any of the criminal activity. From my perspective that is probably the most powerful component of this legislation: the fact that you not only need to participate knowingly, you can in fact be reckless as to participation in that group. That is very powerful. The other is the recruitment of a person to actually commit a criminal act in this area. They are the two key ingredients from my perspective. Fortification issues we have talked about. Again that is very useful, although, as the assistant commissioner has indicated, more recently outlaw motorcycle gangs realise we have been serious in New South Wales. Ranmore has been a very effective way of engaging. We have improved in that area significantly and now they are much more compliant and obliging.

Senator BARNETT—All right. Do you have a view on the merit of proscribing an association or an organisation, whether it be an outlaw motorcycle gang or other organisation?

Commissioner Scipione—I am yet to be convinced that it is the way to go. I could stand convinced, and I am sure that there will be an opportunity for this to be considered, but at this stage I am yet to convinced.

Senator BARNETT—Thank you for that. We had evidence this morning from Gilbert and Tobin in terms of their concerns about civil liberties and criminality by association and those sorts of things. They talked about our federal terrorism laws and the proscribing of an organisation, which would have to be by regulation so it could be subject to disallowance by either house of parliament. They talked about the importance of certain safety protections for

civil liberty purposes and so on. Do you have any key principles that you espouse in terms of protecting individual rights and freedoms that in your view are important and that you could alert us to?

Commissioner Scipione—I think that those protections are inherently important in any legislation in this country. The beauty of living of Australia is that we are a well-governed, just and fair society, so we take that into account. Of course, there are different types, levels and classifications of crime in which sometimes the greater good is to impinge a little on some of those otherwise sacredly held positions. The legislation that you are talking about with regard to terrorism, for instance, is one where the potential catastrophes that we are dealing with I think often justify the position that has been adopted, and the federal legislation is one that we are quite comfortable within New South Wales.

Senator BARNETT—I will move to another area: the recent High Court case regarding the New South Wales Crime Commission, with the High Court basically saying that in undercover or covert operations the use of what I think was six kilograms of cocaine—I stand to be corrected on that—was inappropriate because it affected the health and welfare of the potential consumers. Has that had an impact on your operations? If you feel more comfortable answering in camera than publicly, that is fine. I am just asking for a response to that High Court case.

Commissioner Scipione—I would probably prefer to take that in camera. Controlled operations, which are what you are talking about, are something that are vital as a law enforcement tool in Australia. Perhaps it might be best, Chair, if we were take that in camera.

Mr WOOD—Regarding the use of section 93T, participation in criminal groups, I am trying to work out how effective it is if half of the people charged have not been convicted. Senator Parry was whispering to me earlier that it is actually used to start an investigation and you then come to more substantive charges. Is that the case, or is the other way around?

Assistant Commissioner Hudson—I would say from experience that it is the other way around. We start investigating a more serious offence, but the legislation is available and they are charged under that as well. The trouble with gaining exact numbers in relation to convictions is that many of these serious matters are still before the courts and probably will be for some time. It is more the case that we investigate a more substantive offence which carries more than five years penalty. Five years is the benchmark for a serious indictable offence in New South Wales. Whilst it is a serious and indictable offence, there are offences associated with these types of groups that attract significantly higher penalties in relation to commercial drug supply and a wealth of other offences. Whilst we do charge for this offence, we also obviously charge with a more substantive offence and await the outcome of that prosecution.

Mr WOOD—If there is a case where a person has just been charged solely with participating in a criminal network, has that actually occurred? What are the penalties? The reason I am asking these questions is that eventually we have to put recommendations forward and we want to see what is working on the ground and what is not. You have said in your submission that this is some of the strongest legislation in the country. Therefore, we want to see how practical its use is, whether by New South Wales or by another state.

Assistant Commissioner Hudson—I am unaware as I sit here now of any offence where it has been the only charge preferred against an offender without other charges being laid. It is an offence that carries five years and our threshold for telephone intercept capability—I am not too sure if this is an issue we should be speaking on in camera or not—is a seven-year threshold, so we cannot investigate for this particular offence as a stand-alone.

Commissioner Scipione—Perhaps we can bring that in when we start looking at the serious organised crime activities in terms of what we are doing. That could be useful.

Mr WOOD—I will be interested to know, regarding Senator Barnett's questions, if a judge or magistrate actually has given the penalty, how much the penalty was for participating in a criminal group. Something that has been raised before in regard to sim cards is the need for people to produce a 100-point check before being issued with the sim card. How effective would that be in tackling serious crime, or does it rate fairly low in the pecking order when it comes to legislation?

Assistant Commissioner Hudson—I think any increased monitoring of sim cards would be of assistance in relation to identifying which individuals have phones. It is not unusual for people that we investigate to drop phones regularly, even daily, when we are conducting investigations.

Mr WOOD—So, if you had legislation for the states to implement or maybe at a federal level, how much assistance would that give in fighting serious crime?

Assistant Commissioner Hudson—I think it is very hard to determine what effect that would have. As I said, I would support any tightening of the current requirements in relation to obtaining the sim card. Making it more difficult to obtain sim cards is obviously a positive. What effect it would have on our investigations of crime I think would be undetermined because there are a number of other factors that come into play in relation to their criminality and their ability to circumvent that.

Mr WOOD—I have two more questions, both of which you may want to take in camera. What recommendations would you make for this committee when we actually put our final report out? The second is the way street crime is working, with, say, outlaw motorcycle gangs or other gangs from a street level taking orders from above. Would you prefer to answer in camera?

Commissioner Scipione—I think that would be more appropriate.

CHAIR—I think we have finished our public session now. I ask members of the public to leave the hearing.

Evidence was then taken in camera—

Committee adjourned at 4.52 pm