



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

JOINT COMMITTEE ON THE AUSTRALIAN CRIME
COMMISSION

Reference: Legislative arrangements to outlaw serious and organised crime groups

FRIDAY, 7 NOVEMBER 2008

BRISBANE

BY AUTHORITY OF THE PARLIAMENT

INTERNET

Hansard transcripts of public hearings are made available on the internet when authorised by the committee.

The internet address is:

<http://www.aph.gov.au/hansard>

To search the parliamentary database, go to:

<http://parlinfoweb.aph.gov.au>

JOINT STATUTORY
COMMITTEE ON AUSTRALIAN CRIME COMMISSION
Friday, 7 November 2008

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

Members in attendance: Senators Fielding, Hutchins, Polley and 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

BARNETT, Assistant Commissioner Ross Edward, State Crime Operations Command, Queensland Police Service.....	18
CUNNINGHAM, Mr Rodger, Private capacity	2
DANN, Mr Gary, Road Captain, Bandidos MC	2
GILDEA, Mr Errol Stephen, President, Hells Angels	2
HAY, Detective Superintendent Brian James, Fraud and Corporate Crime Group, Queensland Police Service.....	18
HOGAN, Superintendent Gayle Patricia, Organised Crime Group, Queensland Police Service	18
KEEN, Mr Christopher, Director of Intelligence, Queensland Crime and Misconduct Commission.....	28
O’GORMAN, Mr Terry, President, Australian Council for Civil Liberties	34
STEWART, Deputy Commissioner Ian Duncan Hunter, Specialist Operations, Queensland Police Service.....	18
WEIR, Detective Acting Superintendent Robert, State Intelligence Group, Queensland Police Service	18

Committee met at 8.29 am

CHAIR (Senator Hutchins)—Ladies and gentlemen, I declare open this public hearing of the Parliamentary Joint Committee on the Australian Crime Commission. This is the seventh hearing for the committee's inquiry into the legislative arrangements to outlaw serious and organised crime groups. The terms of reference are on the committee's website. The committee has held hearings in Adelaide, Perth, Sydney, Hobart, Melbourne and Canberra earlier this year.

The committee's proceedings today will follow the program which has been circulated. I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee. The committee prefers all evidence to be given in public, but under the Senate's resolutions witnesses have the right to request to be heard in private session. It is also 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. This resolution does not include questions asking for explanations of policy or factual questions about when or how policies were adopted.

[8.31 am]

CUNNINGHAM, Mr Rodger, Private capacity

DANN, Mr Gary, Road Captain, Bandidos MC

GILDEA, Mr Errol Stephen, President, Hells Angels

CHAIR—Welcome. Mr Gildea and your colleagues, we have cameras here and recording devices from other media outlets. Do you have any objection to both?

Mr Gildea—We have no objection to the committee recording, but we have not had a good trot with the media and therefore we do not feel comfortable with the media here.

CHAIR—I cannot stop them from being here, but I can stop them from recording. So could the cameras stop rolling, and could anybody else who has a tape recording in here stop that. Do you have any comments on the capacity in which you appear today?

Mr Gildea—I am the President of the Hells Angels Motorcycle Club here in Queensland. The capacity in which I am here today is to represent all my brothers from all clubs here in Queensland—one per cent clubs who these draconian laws are aimed at. I am here to speak on their behalf to the best of my ability.

CHAIR—Thank you very much, Mr Gildea. I now invite you to make a brief opening statement, at the conclusion of which questions will be asked of you by the committee.

Mr Gildea—I would like to firstly apologise upfront for any mistakes that I might make through not being versed at speaking in parliament. This is a first for me, and, if I had my way, I would not be here. However, the situation is as it is. I would like to also thank you all for giving us the opportunity to appear here and speak. It is probably a first, having a collection of people like this here in a parliament, and we are all grateful for that.

The first part we want to bring up would be the way we have been treated in the media. We have a definition here, which I will not read because it is, as you say, inappropriate to do so. I will table this. It defines fair journalism in a democratic society. It covers it right there. We are going to go straight on to it. We have an example we have brought in, and this is an example of many—

CHAIR—Before you go on, Mr Gildea, are Mr Cunningham and Mr Dann appearing as well?

Mr Gildea—I am speaking. We have done the research together. He is feeding me the prompts, because, as I said, I am not versed at doing this.

CHAIR—Okay.

Mr Gildea—Please bear with us. This article appeared last Sunday in the paper. This is one of many hundreds that have appeared before us over the last five to 10 years. We want to go straight to the point. We have had enough of this rubbish. The journalistic measures used here have no significance whatsoever to do with us. The actual title on it is ‘Bikies face a ban on identity’. Firstly, just so we can let you all know, we find the word ‘bikies’ repugnant. It is like calling a police officer a pig. This continuously happens that politicians, the police and others call us bikies. We are bikers. ‘Bikies’ is a fictitious name made up by someone. We are not bikies, we are bikers. So if we could identify that first. This article is by the crime editor Paula Doneman, who is probably a lovely lady, but in this instance what she has done to us is totally unfair and it leads the public to believe that we are a pack of monsters. This has been going on for the last few years.

I quickly want to go through this just to show you one example of what we are putting up with at the moment and the conditioning of the public to make us look like we are monsters. We are not monsters. We all have families, children and wives the same as everybody else. Most of us here have jobs. We thought that this tribunal was to cover the crime groups but she has down here about bikie gang laws. So these laws are just targeted at us. Is that what this is coming to? Nowhere in the legislation, which I read yesterday, does it say anything about bikies. But everything in the paper is the new anti-bikie laws. So we need to know: are they anti-bikie laws or are they non-discriminatory and cover everybody?

This is how inaccurate the reporting is. They have here about the Nomads and Fraser Coast. They have not been there for four years. It also has that allegedly they had a witness. This is another thing: there is always a bikie that is giving them information. This is so detrimental it is not funny. There are absolute threats through it. We have highlighted all the threats and what they are. If I was part of the public and I read that and thought there was truth to it, I would have a serious problem with it as well, but the thing is, these people have not been made answerable and should be. We have decided no longer to put up with it. It is totally undemocratic and it is abusing their rights as people of the press. She says:

The *Sunday Mail* also can reveal that 10 of the 14 resident bikie gangs in Queensland called a truce to meet at a secret location on Brisbane’s southside to discuss the proposed anti-bikie laws.

She has printed ‘the proposed anti-bike laws’. So who is running the show here? Are they anti-bikie laws? Then it goes on:

They told *The Sunday Mail* ...

Who are ‘they’? Everybody who was at that meeting is here today. If Paula Doneman is here I would like to know who the ‘they’ is. Then she goes on to say that the laws have been introduced in South Australia and Western Australia. Well, they might have been passed but they have not been acted on. She then has a ‘he’ so it is one person that says the next thing:

“If there are no colours, how dangerous do you think that will be for police and the public, not being to able identify us?” he said.

“No colours will break down barriers between us and we will work together. That means there will be more drug deals and more murders.”

That is just ludicrous. And who was that person that took it upon themselves to say there were going to be more murders and drug deals? This is what we are facing and the public get to ring this day in and day out. We have never had a fair go in this. Up until now we have been silent, but no longer. We are not putting up with this any more. As a free society we have the right to challenge this.

We are going to serve Paula Doneman with a notice of further and better particulars so she can explain to us who has threatened—and this is a direct threat to the public—with murders and more drug deals. We are so scrutinised now by your Hydra force and all the other things that you have in place. You listen to us all. And here we are going to have ‘more murders and drug deals’. I just find it very hard to believe in Australian society that this is actually happening to us.

Then, right next door, it has ‘guns and drug lab found by police’, conveniently put right beside us. We have highlighted how many times the words ‘claimed’ and ‘alleged’ have been used here. I am not going to go through the story because it is rubbish; it is not worth the paper it is written on. But that implicates us to these drug labs. Quite reasonably, anybody who is reading this would associate this with this.

That is what the media have been doing. There are a hundred examples of this. We are going through the archives, and we are going to fish them all out, because this shows that it is being used to condition the public so that, when these draconian laws—which I cannot even believe belong to Australia or come from Australia—come up, they are going to have the foundation because the fear is already in the public’s hearts and minds. That is the point. There is a copy of the notice that we will be rendering. From now on, anybody in the press who decides that they have got an alienated bikie who is going to give this damning information will be accountable. No more.

We go through to the end of this, and it has, ‘Mr Rann is encouraging other states to follow his lead.’ Quite frankly, when he first started this, Mr Rann said, ‘We do not want bikies in South Australia.’ In other words, it is everybody else’s problem, as long as they go. Now he knows as well as we do that these laws are impossible to work. They will not work, and the Australian people will not have a bar of it.

We have a copy of John Goldberg’s address to the people on Tuesday, 4 November 2008. I understand that Mr Rann used to be a journalist and a speechwriter. Well and good to him. Mr Goldberg, however, is President of the Law Society of South Australia. Wouldn’t one think that, if you are qualified as a speechwriter and then become a politician, you would ask Mr Goldberg before you spend all this money, the public’s money, on putting through laws that are doomed to fail? I tender this, and I would dearly love to read it out because everybody should hear this. Here is a man who specialises in the law. For the life of me, I cannot understand, and neither can the rest of us, why Mr Rann did not confide in an expert.

CHAIR—We have heard from the South Australian law council.

Mr Gildea—Have you seen this?

CHAIR—Not that article, but we have got their submission.

Mr Gildea—Would I be allowed to read it quickly? It is not long.

CHAIR—I do not know if you can read it quickly. Just table that.

Mr Gildea—The reason I ask you, Steve, is that it carries a lot of the fundamentals that we are all about.

CHAIR—You can table it. We will have an opportunity to read it, as we will your substantial contribution, later.

Mr Gildea—Okay.

CHAIR—But, Mr Gildea, if you could start to wind—

Mr Gildea—It is important to our cause, because here is someone who is the leader of the Law Society, which means he is fully qualified and versed in Australian law. He is saying it is—

CHAIR—Mr Gildea, we had about five QCs before us in South Australia, probably arguing whatever Mr Goldberg has got there, so it is not that we are unfamiliar with what they have put.

Mr Gildea—That is okay. I have a document here that is the Universal Declaration of Human Rights, which is too lengthy to read out, but it does state that we are all born free, that we have the right to assemble wherever we like and that we cannot be discriminated against—equal protection against any discrimination. It says everyone is entitled equally to ‘a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him’. I am not going to go right through this. I will tender it instead.

CHAIR—If you would like to lodge that as well, we can have a look at it.

Mr Gildea—We have highlighted the aspects that, for us—

CHAIR—Are there many more documents that you would like us to have a look at? We would like to ask you some questions.

Mr Gildea—Okay. When we first contacted the committee secretary we had the understanding that we would be allowed to speak. Do not get me wrong; we are very pleased to be able to be squeezed in for half an hour. But, compared to all the other groups who are coming here and giving their submissions—we thought that we would be able to come and put our case across.

CHAIR—You may well get your opportunity. If we can ask questions, you can expand on your case in your answers.

Mr Gildea—All right.

CHAIR—Is there any thing else there that you particularly wanted to present to the committee that you can table and we can look at when we are considering our report?

Mr Gildea—I would just like to read out our points of interest and then accept questioning from you, if that would be okay.

CHAIR—Is it very long?

Mr Gildea—It is one page.

CHAIR—Okay. Off you go.

Mr Gildea—Take the terminology ‘outlaw’. It actually means that bikers believe that they have been placed outside of society’s laws by government—that the government has one set of laws for it and another set for bikers. It does not mean that we think that we are outside of society’s laws. This goes back to the sixties. Our laws should be in place to prohibit illegal activities—crimes such as assault, robbery, theft, murder, et cetera. They should not be in place to prohibit membership of clubs or organisations which are not illegal. We have many individuals within the bike scene that belong to motorcycle clubs and have committed crimes, and those individuals should be charged and convicted as individuals. A member of a local football club who commits a crime is charged and convicted as an individual, but his football club is not banned. A member of the local police force who commits a crime is charged and convicted as an individual, but the police force is not banned. Then so, too, should a member of a local bike club who commits a crime be charged and convicted as an individual; his bike club should not be banned.

How can you hold an organisation responsible for the actions of its individual members? We could give numerous examples of politicians and officers of the police force who have committed crimes and have been charged and convicted as individuals. These crimes include theft, assault, drug-dealing and paedophilia. Those individuals have been punished, and rightly so, but we have not tried to label the government or the police force illegal organisations; nor have we tried to hold the head of government or the commissioner of police responsible for the actions of the individuals. Our current laws enable the police force and the legal system to punish those who have committed a crime against society without having to try and introduce draconian laws that would reflect the views and the actions of Nazi Germany during the Second World War. That was what we wanted to say.

CHAIR—Thank you, Mr Gildea. This inquiry is an inquiry into serious and organised crime. So the first question I am going to ask you is: what relationship is there between biker gangs and organised crime groups—if any?

Mr Gildea—Can say this: we do not call ourselves gangs. We are not. I will just show you quickly that on the back of my colours, and those of every other gentleman here, you will see the letters ‘MC’. They stand for ‘motorcycle club’. We put that out there. We are not a gang. We are a motorcycle club.

CHAIR—Mr Gildea, let me redraft the question then. What relationship is there between motorcycle clubs and organised crime, if any?

Mr Gildea—None.

Mr Dann—'Disorganised', if anything.

CHAIR—There have been plenty of reports around Australia that there is a relationship between motorcycle clubs and the distribution of drugs in this country.

Mr Dann—Who is making those statements? And where is their proof? What individuals do is their thing, not their club's. The club does not break the law, as a rule. If individuals do, that is their business. They should be dealt with. But we are not an organised crime outfit.

CHAIR—There has been evidence before us that motorcycle clubs are the distributors of drugs in this country and that they have moved into the security industry to control the nightclubs so that they can control the distribution of drugs in the nightclubs.

Mr Dann—Well, I have never heard of that.

Mr Gildea—Can I answer that by saying, firstly, any individual that becomes an opportunist—and we have had them—is frowned upon. If you bring ill-repute to your charter or your club, you could imagine how frowned upon you would be. We have seen individuals go into the security system around nightclubs and pubs. But the frustrating part of this is that all the licensing is issued by the police. The police have been going around Brisbane, for instance, saying that anybody that is in an outlaw motorcycle club will not be allowed entry into a nightclub or a pub. If I am wearing a suit, which I commonly do, how do they know whether I am in a motorcycle club or not? If so, would I be carrying drugs on me to sell in a nightclub? I don't think so. I go out to enjoy myself, like all these brothers here do. The police have got their capabilities and their expectations mixed up.

As far as being organised crime, I am quite happy—and I will put my neck out here—if you wanted to have a look at our meeting book, to show it to the committee, because it has no remnants of any crime. We do not go to discuss crime—that is pathetic. This is the first time we have been able to say: 'Hey, pull up, you guys. Have a listen to us.' If you want to see how we live, I will invite every single one of you senators to our clubhouse. Come and have a look at how we live instead of sitting there, listening to all these law agencies that want to further better their budgets. For instance, the Hydra squad—a lovely squad!—are going to give you statistics later on in the year or whatever for their budget that they have done a good job. They attacked our public when we had an open day for the public where we say to the public: 'Come and join us and see what we are like. Come and have a look at our memorabilia and our clubhouse. Come and enjoy the day with us, for a ride.' We got permission from the local police. We took the time out—and all the other clubs have done the same—to the say to the police, as gentlemen, 'How can we work this together?' We already had a system and an arrangement. These guys turn up and they give out 177 tickets to the public. This has never been done before. They are supposed to be in charge of organised crime. Why are they attacking our public? There were 177 photos, when at first the police issue us and guide us through all the lights. Now, that is not doing their job. These are just some of the things that we are having to face at the moment. We are under a barrage of attacks from everywhere.

To give you a good insight, I would love to see the day when parliamentarians can come out to the clubhouse and have a look and make up their own minds and meet us on an individual basis,

because we are not the monsters that you guys think we are. We are as human as everybody else. We bleed the same colour as everybody else.

If we want to go on about performance, today I understand that you are being delivered information from the ACCC. Their track record, if anybody is going to be a monster drug dealer—Mark Standen. Here they are saying that there is only one man in charge of one of the single biggest ice busts and there is no-one else involved—I find that very hard to believe. I also have trouble with the way they are going to give their evidence or submissions, when this matter has not been cleared up. If it comes to a mud-slinging match, we don't want that either; we want justice and rights for everybody equally. All this BS about bikie legislation—why don't you declare it and say it is bikie legislation and discriminate us properly. At the moment, the way this is going, this is not only not fair and unjust; it reminds us of the KGB, the Nazis, whatever. Someone could come in along with this new legislation and say, 'Righteo, you're declared.' The next thing, all the things that we have worked for and embraced all our lives—they take our motorcycle. In our case you can't because we are trademarked, in every facet. So Rann's laws are not going to work anyway.

The media has gone rushing ahead and said that the Mongols over in the States are losing their trademark. That is rubbish. For anybody to lose a trademark in that manner would leave anybody who has a trademark—Coca-Cola, whoever—very vulnerable. I could not see that being the case. All we ask is that, when making laws, you consider everybody, and that is your job as public servants—to serve us, not serve us up. In the future you will find that we will be very proactive. We have sat on our hands long enough. We are members of the community as much as everybody else is. Because we look different and dress different does not mean that we are any worse or better than anybody else. This is what Australian society was born from.

CHAIR—In your experience, have the motorcycle clubs ever been this united before?

Mr Gildea—Have we had bitches amongst us?

CHAIR—No, this united.

Mr Gildea—This is the most united I have ever seen our community, and I am proud to say that we have.

Mr WOOD—You mentioned before one percenters. What does one percenters mean?

Mr Gildea—A lot of this goes back to the sixties. The one percenter was the one per cent of society that gave up. Nowadays one per cent means the outlaw motorcycle clubs—the clubs that have the love of the brotherhood between them all and wear the colours to display it proudly.

Mr WOOD—Does not one per cent actually mean that it is involved in criminal activity?

Mr Gildea—Definitely not. Who told you that?

Mr WOOD—I am asking you. We ask you the questions. That is evidence we have been told, and you mentioned before one percenters. Are you saying that it does not involve criminal activity?

Mr Gildea—No, not at all. That is absolutely—

Mr Dann—One per cent means one per cent of the population—

Mr Gildea—One per cent of the population is different.

Mr WOOD—Obviously you are speaking on behalf of the Hells Angels. What is your membership in Queensland?

Mr Gildea—I would rather not say in an open hearing but it is not substantial.

Mr WOOD—Is it increasing or decreasing?

Mr Gildea—Decreasing.

Mr WOOD—What is the percentage of members involved in or who have been charged for serious crime?

Mr Gildea—In our chapter, none.

Mr WOOD—So not one member has any criminal record?

Mr Gildea—No. You said serious crime.

Mr WOOD—Okay, drug trafficking—

Mr Gildea—Not one drug trafficker in Queensland—not one.

Mr WOOD—And is that the same for the other clubs here today?

Mr Gildea—I cannot speak for all of the clubs and their performance, but I can speak for the Hells Angels Motorcycle Club Queensland—not one drug trafficker.

Mr WOOD—What about serious violence?

Mr Gildea—Not that I can recall. There might be the odd occasional—the last time a member from us, and I will be straightforward, was convicted there were a couple of weapons found in his factory. He is no longer with us.

Mr WOOD—So what happens if a member is involved in serious crime? What do you do with that member? What happens to them?

Mr Gildea—That is hard to answer because everything has to be taken on its merit. Unlike some bodies we give everybody a fair go. Everybody that gets in trouble must submit their trouble to the table to show they care about the rest of their brothers. But we have not had that situation where we have had anyone in any serious trouble—touch the wood.

Mr WOOD—Why are we hearing evidence then from law enforcement agencies—and can I just say too that this inquiry is actually not just looking at outlaw motorcycle gangs; it is actually looking at serious and organised crime, but evidence keeps getting given of the concerns about motorcycle gangs—you call them bikers.

Mr Gildea—We are the most colourful. No matter what happens if legislation goes through it is not only going to reflect on us. Eventually it is going to filter through to the public and other groups. Because we are the most colourful—we are tattooed and there is the way we look—it matches the scenario very well. And of course we believe we are the ones being used as the catalyst to implement these draconian laws.

Mr WOOD—What are the assets the Hells Angels have in Queensland?

Mr Gildea—I am not prepared to discuss that in the open, but we can submit a report, and it is very little.

Mr WOOD—Can you submit that to the committee regarding the membership and the assets, because one of the concerns being raised is—

Mr Gildea—Do you mean our individual assets?

Mr WOOD—No, I am talking about assets which the club own.

Mr Gildea—I will tell you right out. We own one farm that is 11½ acres that 10 years ago we paid, I think, \$22,000 for it. It belonged to an ex-member who left and who owed the club a lot of money. That is the only thing we own.

Mr WOOD—So the club has no other assets in company names?

Mr Gildea—No other assets at all. We have companies but not for the specific purpose of assets. When we have a poker run, that is an open day for all the public to come and ride with us. It is being open and saying, 'Come and have a look at us.' Every other motorcycle club here does the same. You never get to hear about the good things we do or all the charity events that we raise money for either; it is always about the drugs and stuff. Yes, there are individuals who have been caught and do drugs. We are not here to police individuals. If you look at our club, we are the same as any other club. We have a meeting once a week and we discuss ways in which we can better our clubhouse or a run we are going on. I have no qualms in even tendering our meeting book for you to peruse. You can see that there is no organised crime at all discussed at our clubhouse.

If individuals want to talk about crime the onus is on them. If they get caught, or do what they do, we are not here to tell them what to do. We believe in freedom, but if you do the wrong thing you know full well that you will be answerable for it if you are caught.

Mr WOOD—Regarding the South Australian legislation—obviously it has been talked about being pushed around the country—and if the Queensland state government is looking at the legislation, this committee is looking at it from a different level, with regard to the effects of legislation across the country. If South Australia introduces their legislation and, say,

Queensland, New South Wales and all the states do, what would actually happen to the outlaw motorcycle clubs? What would your response be to that?

Mr Gildea—We do not want to say that we are going to be forced underground. You are going to have to line us up against a wall and shoot us, then, because that is where you are going with it. This is Nazi bullshit, right! To think that it was borne from a group of Australian politicians, or whoever, is just hard to fathom. If you people think that you are going to take our trademarked goods away from us, it will not happen.

Mr WOOD—Are you saying there will be violence if—

Mr Gildea—No, I am not saying there will be violence. That is why we are here today. Everybody draws the same conclusion. We will fight you on an even par, as gentlemen. I have been a member of the Hells Angels for 15 years. I have got friends all over the world, I love what I do, I love my wife and I love my brothers, dearly. You guys are saying, without any informed information, apart from law agencies, that you are going to turn around and take our lives away. Where do you want to push us? We are in the society and we have been here for the last 50 years—50 years! Now, all of a sudden, you think it has got out of hand. The thing that has got out of hand is the way the information is flowing from the media and other entities.

Mr WOOD—Thank you very much for your answer.

Senator POLLEY—Thank you for coming before us today. I just want to clarify what you said a little earlier in relation to members of your club that are not involved in serious crimes. I refer to an article that appeared in the paper on 5 September 2008 relating to the Finks and the Hells Angels in relation to an incident that happened at a kickboxing tournament. Are you aware of that?

Mr Gildea—Yes.

Senator POLLEY—Were any members of your club involved in that who have since been charged with serious crimes?

Mr Gildea—Yes, interstate there have been two.

Senator POLLEY—Right.

Mr Gildea—They were charged but not convicted.

Senator POLLEY—Charged but not convicted. With the legislation that has gone through the South Australian parliament that you have spoken about this morning, there have been assertions made that it will force motorcycle bikers out of South Australia and, potentially, into Queensland. Would that be a fair assessment from your point of view?

Mr Gildea—Not at all. From this point on, we are gathering momentum. We have a lot of different sections of the community giving us support, now that they can see what is happening to us. We believe everybody will fight it on its merit, as to where they are. We do not see any future in moving from state to state—that is not going to help anything. Furthermore, it has not

really been discussed. This is only my personal opinion that I am sharing with you. I have never heard it being discussed. We have visitors up here—our brothers from interstate. Nobody else here heard that.

Senator POLLEY—Just to actually correct the record in relation to your comments about the good work and charity work that bikers do around the country, I think it would be fair to say that is acknowledged by the community—just so you realise that we do know that.

Mr Gildea—Thank you.

Senator POLLEY—It is appreciated throughout the community. But there is a problem in relation to the image of bikers around the country—

Mr Gildea—Definitely!

Senator POLLEY—rightly or wrongly. It is on the record. Is there a way in which the bikers can actually help to overcome and contribute to combating and reducing serious crime?

Mr Gildea—Yes. There could be more combined toy runs. There could also be more lines of communication, understanding and tolerance between all of the groups. There also needs to be a lid kept on such rubbish as this *Sunday Mail* article. The number of times we have seen this in a newspaper is ridiculous, as is the number of times they say ‘alleged’ or ‘a bikie said’. Firstly, stop calling us bikies. We are bikers. The bikie thing is ridiculous. It is rubbish. It is not even in the dictionary. The media definitely needs to have the ropes put on it, as do the law enforcement agencies. That is clear to us now that we have started sharing information. When some of these law enforcement agencies come through for a warrant, the warrant is ridiculous. They say they are doing their surveillance, but all the warrants have the same things written on them for different clubs because they thought that we would never talk. Now we are seeing how corrupt some of these agencies are. They, too, are all on notice because we are not going to take any more of this. For years we have let all this bad publicity manifest itself against us. We have not challenged it, and that is where we have gone wrong. All the good that we do gets eaten up by someone who prints out absolute rubbish with no foundation to it, and then the public read it. That is where our image comes from. And how do you think we feel about that? That is the reason for every gentleman being in this gallery today. We have had enough. And we are part of your public. We do not want to be served up anymore. We are getting served up on all fronts.

These law enforcement agencies have to get quota, or whatever they do, to cover their next year’s budget, but it should not, anymore, be at the expense of us. We had a raid at our clubhouse, for instance. I was lying in bed at quarter to six in the morning. They waited till our last brother came out of the clubhouse, and then they had the big rah, rah, rah with the balaclavas. They chopped a hole in the door and then rang me. I got down there and I said to the Hydra force, ‘Why couldn’t you ring me? I would have let you in.’ Do you know what they found in our clubhouse? They found nothing. And we had to pay for all the damage. Don’t you think it sours us all up? We are all being treated like this.

Senator POLLEY—Thank you very much for your evidence.

Ms LEY—Mr Gildea, could you tell us the names of the clubs that are here with us today?

Mr Gildea—We have the Nomads motorcycle club, the Bandidos, the Odins Warriors, the Hells Angels, the Outcasts, the Vietnam Vets, the Rebels, the Lone Wolf, the Finks, the Ulysses and the Iron Horsemen. We have just about every club in the state of Queensland represented here.

Ms LEY—And what are relations like between the clubs?

Mr Gildea—They are getting better all the time.

Ms LEY—So they have not been good but they are improving?

Mr Gildea—They have not been as good as they might have been, but, as you can see, we have lines of communication now. That is why we are assembled here. This is the proof of it and hopefully, within time, it will get much better too. Everybody wants to enjoy themselves. We all love motorcycles—since we were children. We love stuffing around with them; riding together as brothers. We have a love, and that is what you politicians need to understand. All respect due to you, but you do not know our lifestyle. No-one has taken the time to even ask or learn it or come and see. There is an open invitation to you to come and see a clubhouse.

Ms LEY—We will take that on board. Could you explain the process of how you accept new members into the club? You have mentioned that your membership is quite low. Is that the case for all of the groups?

Mr Gildea—Not necessarily.

Ms LEY—Can you explain the process by which new members join the clubs?

Mr Gildea—There is not really a process. It is about brotherhood and love; and when you learn to love and respect all your brothers, you become a brother. It is about love and respect; it is not about hate.

Ms LEY—If someone was of that mind, was keen on motorcycles and wanted to join, would they be able to?

Mr Gildea—I cannot see any reason why not, if they were a good Australian person. There are no criteria. For me to explain it would be robbing the rest of my brothers here of explaining their way. When you go anywhere, you find you get on better with some people than others and then you become close. It manifests from that and from the love of riding motorcycles. You have got no idea what it is like to ride from here to Darwin in five days—I mean, you get a sore arse, no worries, but it is absolutely terrific fun. We stop at night. We all drink together and have a laugh. That is what life is about. You guys need to know that we are not here to manifest crime. We would have to be stupid in this day and age to think that we could get away with that sort of outlook on life. We would not last 10 seconds. The proof of the pudding is the number of arrests compared to a lot of other groups. We are about getting all the statistics for that as well.

Ms LEY—Do you have women in your clubs?

Mr Gildea—Women? It is a male thing, sweetheart.

Senator FIELDING—With the South Australian laws that have gone through, there is a concern that we will see motorcycle clubs move from that state to other states.

Mr Gildea—Senator Helen Polley said the same thing before. I cannot aid you by giving you a scenario here, because that is all it would be—hearsay. That I could not tell you. The way South Australia is going, I would be surprised to see Mr Rann in office for too much longer, bringing up stupid laws like that.

Senator FIELDING—But if the laws were carried out, would you see motorcycle clubs move?

Mr Gildea—Everyone will be in jail and all their assets will be taken, won't they? So where are they going to go? That is what you are saying. That is what the law says. You are going to lock us all up for five years and steal all our stuff.

Senator FIELDING—The actual laws do not target just motorcycle clubs.

Mr Gildea—According to the media they do.

Senator FIELDING—I am saying the laws themselves do not. I am just interested to know if it is your feeling that they are not going to move from one state to another.

Mr Gildea—If they do not target just us, then who else have you spoken to that you feel is in organised crime?

Senator FIELDING—We have spoken to various bodies. I am just interested to know your—

Mr Gildea—Law enforcement agencies are those 'bodies', aren't they?

Senator FIELDING—Yes.

Mr Gildea—Nobody like the public—the people who the laws affect in the end?

CHAIR—You are here.

Mr Gildea—Yes we are and we are thankful for it. Don't get me wrong. I do not want to blow it and piss you all off. Don't get me wrong. I am trying to be open with you. I cannot answer that fairly. If I could, I would.

CHAIR—I think we are getting to the question about displacing clubs. Do you think that the legislation will drive people to other states or make them go underground? Is that what people, in your experience with your other clubs—

Mr Gildea—When you bring in laws of this nature, never seen before in Australia, anything is possible. I honestly cannot see these laws going anywhere—being a democratic society. That means Australia has lost the plot if we allow this sort of thing to happen to our people. And we are the people. We are like a creed. If you want to compare it, you could say that if you

politicians and police want to wipe us out it is similar to genocide, because we are a creed. We have been here since the early sixties. In our case, our club is 60 years old.

CHAIR—Your club internationally has members that have been convicted of serious crime in the United States, Canada and other parts of the world.

Mr Gildea—Yes. So have the police forces.

CHAIR—What connection do you have with Hells Angels International? Is there a global umbrella group?

Mr Gildea—What do you mean ‘a global umbrella group’?

CHAIR—Your chapter here in Queensland is affiliated with the ones in North America and Europe. Is there a central body with the name? How does one start up a Hells Angels chapter in Canberra? You have trademarked the name, so how do they do that? Do they go through an international body to get permission to use the name of Hells Angels?

Mr Dann—I can say something on that side of things. I have been overseas myself with the Bandidos all around the globe. With my brothers, whether here in Australia or in Denmark, Norway, Sweden or wherever in the world, as soon as we arrive there we get treated the same as we do back here. And it is all the same around the world. Big international visitors come to this country for different events, and we go over there for different events—

CHAIR—So you are affiliated internationally with other clubs?

Mr Dann—We are all still the same club—Bandidos Australia, Bandidos International worldwide.

CHAIR—And if, say, Hells Angels or Bandidos got into a bit of difficulty in North America would you have the same approach as you do here?

Mr Dann—What happens in places like that—

CHAIR—Hold on. If individual clubs, say in North America, were involved in serious and organised crime and were convicted, would you give them a wide berth or would you continue to be associated with them when you went to North America or Europe or wherever else?

Mr Dann—It gets sorted out on a table. It is hard to pick which way, but what you are talking about—like Canada for instance and things like that—we disagree with a lot of the stuff that went on over there. A few people went and had personal meetings to get this thing stopped and to stop the crap from happening. And that is what has been happening—the same as Europe, the same as Canada, the same as New Zealand. All the people, like the Hells Angels and the Bandidos worldwide over in Europe now have got together, communicated together, to stop the deaths, the violence and whatever and as clubs to get along and stop all the violent stuff and whatever had been happening in the past. The past is past; the future where we are all headed for now is totally different. The clubs have changed their ways for the future and that is the direction we are all going in. That is why we have got our lines of communication happening. And it has

worked and it is working well and communicating has stopped a lot of bullshit from unfolding. That is where we are up to now—we always communicate now. If there is a problem with one club they ring, we discuss it, if necessary we have a meeting on it and sort it out before it turns to violence or anything like that.

CHAIR—Do you have any relationship with the law enforcement agencies here in Queensland? Do you have someone you can ring up or they can ring you up? So that if you want to do a bike run they will make sure the lights are turned off and so on?

Mr Gildea—We do have a rapport with the local police where we are at Browns Plains. As I explained to you before, we had a meeting with the local police to see how we could best keep everybody safe. We have been doing this for 14 years up here. All of a sudden the Hydra squad comes along and issues our public 177 tickets when the police have been ushering them through the red lights. It is underhanded; it is just sneaking around. If they were straight up they would get a lot more respect like the local police do. They came down and said, ‘How can we help with it?’ We said we had this many people—we had 800 by the way, 800 of the public—and they have given out 177 tickets to the public to ensure that those 177 riders do not come back to us next year. In the last 14 years we have not even had one incident—not even one fight. Everyone has come home safely. The whole idea about enjoying yourself on the road on a bike is to come home safe—to your wife, your family and so forth. What I cannot understand is how you people think that we are so different from the rest of society when we are not. We bleed all the same colour—all of us do. We are all Australians and we are all patriots here. There is not one man here who wouldn’t fight for this country if we were called up to fight. We love Australia; it is our country.

CHAIR—I do not think there are any more questions. Mr Gildea, Mr Cunningham and Mr Dann, thank you very much for coming along today and we may take you up on that offer.

Mr Gildea—We would love to have you come down and have a look.

CHAIR—Okay. And if it is possible to supply membership numbers of the various clubs that will be in camera.

Mr Gildea—For what use?

CHAIR—Just so we can get a snapshot of the extent of membership. If we are only talking about a few hundred people then—

Mr Gildea—There are less than that in Queensland.

CHAIR—If you could do that for us, it would go into camera; it would not become part of our—

Mr Gildea—We have to get permission.

CHAIR—I am not compelling you, Mr Gildea; I am asking if you would like to cooperate with us.

Mr Gildea—We definitely would, that is what we are here for.

CHAIR—Thank you very much, gentlemen.

Mr Gildea—Thank you for the opportunity.

[9.24 am]

BARNETT, Assistant Commissioner Ross Edward, State Crime Operations Command, Queensland Police Service

HAY, Detective Superintendent Brian James, Fraud and Corporate Crime Group, Queensland Police Service

HOGAN, Superintendent Gayle Patricia, Organised Crime Group, Queensland Police Service

STEWART, Deputy Commissioner Ian Duncan Hunter, Specialist Operations, Queensland Police Service

WEIR, Detective Acting Superintendent Robert, State Intelligence Group, Queensland Police Service

CHAIR—I welcome representatives from the Queensland Police Service. I invite you to make a short opening statement, Deputy Commissioner, which will be followed by questions from the committee.

Deputy Commissioner Stewart—The Queensland Police Service is cognisant of a range of emerging issues and trends which have the potential to aggravate the impacts of organised crime groups in Queensland and broader Australian communities. The service is also mindful of the dangers inherent in focusing too intensively on what may be seen as traditional organised crime groups that are both visually observable and publicly familiar such as outlaw motorcycle gangs, or OMCGs.

We are witnessing the emergence of criminal enterprises that facilitate the coming together of different crime skills in the interests of making profit. Whilst at one time an organised crime group membership was operated possibly on geographic or ethnic lines which reflected a long-term commitment, such membership or participation has migrated to more fluid and flexible approaches that may see a temporary union to execute crime within a thematic context—for example, black market web portals, a cyber based environment hosted and conducted for the express purpose of bringing criminals together to facilitate open trading of illegal commodities and services. In this example, whilst they are not strictly members of one organised crime group, they most certainly operate in a collegiate manner in an environment that is structured and rule bound and to which they require membership through the granting of a password or access code.

Effective legislative arrangements to outlaw serious and organised crime groups can significantly enhance intelligence collection and the investigative capacity of police and thus operational outcomes. We believe legislative reform should be considered in the context of the increasing flexibility of crime groups, the borderless and transnational nature of major and organised crime, technological advances facilitating crime and the escalation of gang related activity. In our view, it is essential that an important focus of any future legislative reform to deter organised crime groups must be reducing the profit motive through strengthening the

recovery of the proceeds of crime and the seizure of assets of both individuals and criminal entities. In our opinion, once criminal activity becomes less financially rewarding, the incentive to engage in it will correspondingly diminish.

With respect to the inquiry's terms of reference, I am prepared to offer a short comment in relation to each of the terms of reference on the basis of the Queensland Police Service perspective, which will be expanded on as necessary in any questions you may have. I realise that your committee asked for a short opening address, and that is it. But, if you would like me to talk to your terms of reference specifically, now, I am happy to do that. Otherwise, my colleagues and I are prepared to take your questions.

CHAIR—Do you have anything specific you would like to put to us in relation to some of the terms of reference?

Deputy Commissioner Stewart—I am happy to put that before you now. It is quite short. In relation to term of reference (a), when considering international legislative arrangements developed to outlaw serious and organised crime groups, the RICO legislation in the United States and serious crime legislation in the United Kingdom are at the fore. A number of features of the UK legislation are replicated in the recently enacted South Australian model. It is necessary to be mindful that the RICO legislation was developed to attack a specific organised crime group—the Mafia. To build a prosecution case under RICO legislation is onerous, resource intensive and requires a criminal nexus to substantiate offences. It is legally complex and time consuming to amass and prosecute. Serious crime legislation in the United Kingdom offers some unique strategies to prevent, restrict or disrupt serious criminal activity, such as serious crime prevention orders. These are civil orders that may stay in effect for up to five years. A breach of them is a criminal offence. The serious crime legislation also includes financial reporting orders that may lie in place for up to 15 years. The South Australian legislation incorporates some elements of this legislation.

In relation to term of reference (b), when considering the need for Australia to have legislation to outlaw specific groups known to undertake criminal activities and membership of and association with those groups, it is imperative to maintain an inclusive focus when determining the groups that should be considered. Groups which are identified as having considerable criminal capability and intent are a high risk to law enforcement due to their considerable influence on crime markets.

These groups pose a serious threat to community health and safety, a threat that demands a stronger response. As I have mentioned, criminal networks are clearly becoming increasingly global and flexible in their association, duration, skills and ethnicity. Ideally, legislative arrangements need to take account of this fluidity. These sometimes hierarchical groups use group membership networks in Australia and overseas, communications, buildings, vehicles and other assets and company structures to commit crime and launder proceeds. As existing legislation is offence specific, it usually targets the assets of individuals rather than those of the organisation. Accordingly, there is no impediment to asset retention by corporate entities, notwithstanding the criminality of group members, which contributes to the situation where gangs are able to flourish.

The use by organised crime groups of increasingly sophisticated communications and internet technology is making it significantly more difficult for law enforcement to identify, track and gather admissible evidence against offenders involved in national and international criminal activity. Storage of and access to data across a range of commercial enterprises present another emerging threat to effective law enforcement. The impact of mergers and privatisation across telecommunications, the energy industry and banking institutions, combined with interstate and offshore file storage, makes prompt access to essential records increasingly problematic. Identity theft and associated internet and credit card fraud continue to grow as an area of concern for the Queensland Police Service.

High take-up rates of home internet usage make Queensland and Australian communities vulnerable to victimisation from organised criminal groups who are often overseas based, making identification, enforcement, asset forfeiture and compensation action highly problematic. The steady escalation in OMCG chapters and membership, particularly in South-East Queensland, combined with OMCG participation in diverse criminal activities, including drug trafficking, extortion, arson, serious assault and firearms offences, is a significant threat to the safety of the Queensland community.

That groups are dynamic and can be difficult to identify does not mean we should not legislate against them and attempt to use appropriate powers whenever possible. Anti-gang laws of the type enacted in South Australia will undoubtedly have a deterrent effect on the growth and prospective membership of groups, including the recruitment of youth. While the South Australian Serious and Organised Crime (Control) Bill is primarily a response to OMCG activity, the provisions apply equally to other identified criminal groups. The introduction of South Australia's legislation provides an opportunity to monitor its impact on OMCGs and other organised crime groups as a model for consideration of wider application.

I would like to stress that the development and introduction of anti-gang legislation is only one part of the law enforcement response to targeting serious and organised crime groups. We must strive for continuous improvement in investigations, using forensic evidence gathering and analysis, intelligence, collections and information exchange within law enforcement agency and government networks. The effort to collect and further develop intelligence with respect to significant crime issues and criminal networks from the national perspective is strongly supported by the Queensland Police Service.

Both the National Criminal Threat Assessment and Picture of Criminality in Australia, undertaken by the ACC, assist to develop a better national understanding of the significant crime issues as well as improving the ability to undertake coordinated law enforcement action against identified high-threat crime networks possessing transnational and cross-jurisdictional capabilities. The impending introduction of telephone interception powers in Queensland will aid in the enforcement of any future anti-gang legislation.

In relation to term of reference (c), currently this state does not have anticonsorting legislation in place. Traditional consorting laws were repealed in Queensland in 2005, and when in place those laws were increasingly difficult to police. The Queensland Police Service considered there were greater priorities for investigative staff than enforcing consorting laws which had been enacted in the 1920s. Contemporary communications technology, including mobile phone SMS and online forums make criminal consorting less reliant on physical contact and therefore much

more difficult to police. As part of any legislative arrangements based on the South Australian model, it would be desirable to include consorting provisions as a means to inhibit and deter attempts to recruit new members. Validation of consorting activity would be integral to proving associations for the purposes of the South Australian type of legislation.

In relation to term of reference (d)(i) society, legislative attempts to outlaw serious and organised crime groups would reduce these groups' overt threat level to the community through lessening public place gang association, violence and intimidation. It would also reduce the threat of inter-gang violence in public places. More aggressive law enforcement attention could lead to the reduction in organised criminal activity and consequently less victimisation, less black market activity and less flight of capital overseas, ultimately contributing to safer and more economically prosperous communities. On the negative side, legislative arrangements are likely to reduce and possibly eliminate self-identification of groups through wearing of colours and modes of dress to tattoos et cetera and drive groups underground, thus making it more difficult for law enforcement agencies to identify members and known associates. Business and corporations' registrations could be driven offshore, making financial and other regulation and reporting regimes difficult or even impossible. There is also the potential for displacement between jurisdictions where state regimes are inconsistent or nonexistent in some cases. However, on the positive side, legislatively supported law enforcement attention to identify groups would make for a much less attractive environment for prospective membership and hinder open association. Unexplained wealth provisions as exist in Western Australia and the Northern Territory would be a key weapon for police in hindering and deterring criminal activity.

In relation to (d)(iii) law enforcement agencies, more focused and evidence based intelligence-gathering activities will be required of law enforcement agencies to ensure legislative criteria are satisfied. Potentially there could be the need to expose highly confidential sources to confirm assertions made about gang activity. ACC and CMC coercive powers and telephone interception powers would be available to assist with evidence gathering. Legislative measures could potentially provide police with an avenue for greater asset seizure and confiscation.

In relation to (d)(iv) the judicial/legal system, the impact of non-association provisions would also affect bail and/or parole considerations.

On term of reference (e), the Queensland Police Service considers that discussion on the issue is best left to the ACC to evaluate.

In conclusion, the QPS views the ACC's role as integral to the national law enforcement capability with respect to combating major and organised crime and is committed to an ongoing and effective partnership with the ACC.

Mr WOOD—You mentioned legislative reform to tackle gang related and serious crime. Has the Queensland government, on any recommendation from the Queensland police, had recommendations regarding specifically the South Australian legislation or similar legislation?

Assistant Commissioner Barnett—The Queensland government is on the record here as saying that it will consider introduction of the South Australian legislation but it is going to take a wait-and-see approach to that.

Mr WOOD—You mentioned the word ‘underground’—that if you have this legislation it may take crime underground. I always find that a contradiction. Are you saying that at the moment serious organised criminals are not being very overt in their acts? I assume that they are not, so they must already be underground.

Assistant Commissioner Barnett—I was referring to the association issue and the visibility of being associated with a particular group.

Mr WOOD—Are you referring to the OMCGs in particular or any type of game?

Deputy Commissioner Stewart—It would apply equally to any group that openly associates and uses colours, tattoos or some mode of dress to recognise themselves in society.

Mr WOOD—The OMCGs, or the bikers, as they say, were giving evidence this morning. What does the term ‘one percenters’ mean to you? We have heard that it refers to a group of individuals, not any criminal association. Do you have evidence that differs from that?

Superintendent Hogan—We understand one percenters to be those who are outside of the law—to be a separate group and to not be within the law.

Mr WOOD—Where do you get that information from?

Superintendent Hogan—From national research and intelligence.

Mr WOOD—We heard the evidence from the President of the Hells Angels in Queensland. I will not fully quote. But if there is legislation that is similar to that of South Australia—that you have to put them up against a wall to shoot them—obviously you are not going to take this very lightly. What type of concern does that raise for you if this legislation were implemented?

Assistant Commissioner Barnett—The South Australian legislation is a response to what the South Australian authorities see in that state and it is unique to that state. Should this type of legislation be enacted in this state in the future, if any group were to be identified then it would require a substantial evidence base before we would put that application to the government. So any group in this state that is not involved in organised communal activity would have nothing to fear from that legislation.

Mr WOOD—Regarding gang related activity, have you got a number of gangs in Queensland which you are concerned about? Could you list those gangs to the committee or would you rather do that in camera?

Assistant Commissioner Barnett—We would prefer to do that in camera.

Mr WOOD—The term ‘OMCGs’ has been used by law enforcement agencies. In Queensland are they involved in serious and organised crime? We have heard evidence this morning there is no criminal activity involved with the so-called biker groups.

Assistant Commissioner Barnett—What I can say is that over time a number of members of those groups have been charged with serious criminal offences.

Mr WOOD—Do you believe that is because they are a member of a group using their membership to commit crimes? Are they individuals within a gang acting solo or do you believe it enhances, for example, blackmail or drug trafficking? Does their group help them achieve their agenda?

Supt Hogan—There are people within the groups who work independently. They work as a group within the group and they align themselves with other areas. So there are all ambits of that sort of criminality, but it does not necessarily mean the entire club is involved. They sometimes use being part of that criminal entity as a means of extortion or threat or to be able to stand over potential witnesses or victims.

Mr WOOD—Has that been a concern to Queensland police? You mentioned intimidation. Has that been occurring with court cases?

Supt Hogan—Yes, we have had examples where there was intimidation and where people are unprepared to make complaints or to assist police in their investigations.

Senator POLLEY—I have a couple of questions. I understand that you do not want to go in public in relation to identifying certain clubs, but can you give me the names and the number of motorcycle groups in Queensland?

Supt Hogan—Off the top of my head, I cannot.

Mr WOOD—If you can take that on notice.

Senator POLLEY—If you could take that on notice as to the number of clubs, their names and their membership.

Supt Hogan—Okay.

Senator POLLEY—Also, we are looking at this in terms of the broader community because, with all due respect, if there is an element of motorcycle biker groups, they are involved in crime and serious crime. What is the percentage of that in Queensland?

Det. Supt Weir—We cannot answer in terms of percentage but we know from an intelligence perspective that there are autonomous working networks within those outlawed motorcycle gangs. Hence there may be one or two members working individually who have other parties outside that outlawed motorcycle group helping facilitate their ultimate goal and whatever market they are involved in. In terms of percentage it is very difficult to say.

Senator POLLEY—What sort of money value would you put on that then?

Det. Supt Weir—Once again, regarding the drug market—and there are other black markets out there—it is very difficult to put an actual value on it.

Senator POLLEY—Are we talking about drugs? Are we talking about standover tactics? Are we talking about murder? Are we talking about internet fraud? Are we talking about identity fraud?

Det. Supt Weir—Once again from an intelligence perspective we have identified that a primary market, illicit market is the trafficking of dangerous drugs. But in terms of being able to facilitate that there are a number of other crimes that can be committed along the way which again go towards the ultimate goal. They could include extorting people, they could include utilisation of false identities.

There is a number of other crimes. They could involve corrupting human sources within particular agencies to solicit information. They could include engaging in legitimate industries such as security and licensing authorities, again to help facilitate the sale or trafficking of drugs. But we also recognise that there is now diversification and divergence into other areas which are more profitable markets, such as internet fraud and other types of fraud—and Detective Superintendent Hay would be able to answer questions on that.

Senator POLLEY—I will take you to the 2008-2012 strategic plan. Under ‘Major and organised crime’ there is this:

Developing new tools and techniques to address major and organised crime, including Titan threat/risk assessment system, and the Australian National Victim Identification Library

I was wondering, Assistant Commissioner, if you could elaborate on what that actually means.

Assistant Commissioner Barnett—If I may, I will refer that to Detective Superintendent Weir as to the Titan threat assessment matrix. He would be able to explain that.

Det. Supt Weir—As with all law enforcement agencies, we do not have infinite resources. The Titan assessment system is essentially a matrix which allows us to have a look at impacts upon communities, involvements, the types of markets and what sorts of methodologies people use. What we are trying to identify is the high-risk and the high-threat criminal groups. Essentially, the Titan assessment system is a method to allow us to do that.

Senator POLLEY—How many officers are involved? Do you have a special serious crime unit? How many people are in that unit?

Mr WOOD—Although they might want to answer that in camera, Senator.

Senator POLLEY—Yes, okay.

Deputy Commissioner Stewart—If you were to ask that we could provide that to you in camera or subsequently afterwards.

Senator POLLEY—Thank you.

Senator FIELDING—This was touched on before but let us look at serious and organised crime. What in proportionality would come from motorcycle clubs or those people associated with motorcycle clubs compared with everything else? Would it be half? I am trying to get a feel for it. I am trying to get a rough proportion. You must have some idea. I am not after an exact proportion. I just want to know whether half—or whatever, just a ballpark figure will do—of the

serious and organised crime comes from motorcycle clubs or those associated with motorcycle clubs, so we can get a feeling for the size of the issue that we are talking about.

Assistant Commissioner Barnett—I am sorry but I am probably going to disappoint you, Senator, because we are not going to be able to quantify right here and right now what slice of the market may be impacted by the activities of members of outlaw motorcycle gangs. But, as you would remember, in our opening statement we did make reference to other organised crime groups who are having a very significant impact on the Queensland community often from offshore. They are involved in some very significant high-tech crime. I will refer you to Detective Superintendent Hay, who would be able to explain the impacts of some of those groups on the Queensland community. They are quite significant.

Senator FIELDING—Before we go to him, I can say the reason I asked the question is that we have heard reports today that it is blown out of all proportion and it is not as high. I am not after a precise percentage. Is it around 50 per cent or is it 20 per cent? It is just to get a proportion.

Assistant Commissioner Barnett—Perhaps we could discuss that further in camera.

Senator FIELDING—Okay. This morning, in response to a question about motorcycle clubs and their relationship with the police, one of the statements made in response was that police cannot be trusted. To me that is a challenge as to the credibility of the police force in Queensland. How do you respond to that sort of statement?

Assistant Commissioner Barnett—The Queensland Police Service is one of the most transparent and accountable in the country. We have oversight bodies that monitor all that we do. We have a very open complaints regime. If people have complaints about the conduct of police officers in this state, there are many ways by which they can be reported. They will be independently and vigorously investigated and if there is any wrongdoing that is found to have occurred officers will be dealt with.

Senator FIELDING—So have the motorcycle clubs made that claim before to you directly?

Assistant Commissioner Barnett—I am not personally familiar with the status of complaints made by motorcycle clubs and/or their members. If they have cause to complain, the mechanisms are there for them to do that.

CHAIR—We have Crime and Misconduct Commission officers appearing before us next and it may be appropriate that those questions are asked then, Senator Fielding.

Senator FIELDING—There is legislation in WA and also, I think, in the Northern Territory on unexplained wealth. Do you think that would be a useful tool for you to have here in Queensland?

Det. Supt Hay—Most certainly it would be beneficial if we had that. I will give you a demonstration. You may have someone who, intelligence suggests, sits at the top of the tree in a hierarchical structure that amasses vast amounts of assets, millions of dollars, and yet, while the intelligence lends itself to that, the on-the-ground investigation would be such that the evidence

convicts the underlings. Wealth creation provides an onus on them to account for that asset wealth.

Senator FIELDING—So there is a very strong link between serious and organised crime and wealth—would that be right?

Det. Supt Hay—Absolutely. When you go down this path what you will see is that the better organised they are, the greater distance they put between themselves and their ill-gotten gains. They quite markedly make that distinction and put that element there so that, should they go to jail, they still return to significant wealth and power.

Senator FIELDING—There are reports in Queensland and in Victoria, where I come from, about the public being fearful of the laws in South Australia driving motorcycle clubs out of there into other states. Is that a real concern?

Assistant Commissioner Barnett—Is there a public perception?

Senator FIELDING—The public perception first and, secondly, is there a real concern? Should the public be concerned?

Assistant Commissioner Barnett—I would not presume to speak for the public but, as in any democracy, the laws that get passed by the parliament reflect the concerns of the communities about—

Senator FIELDING—I understand that issue, but the issue is: will the law in South Australia, as is being reported, force motorcycle clubs out of that state into other states without those laws in place or with less rigorous laws? Is that a concern for the people of Queensland?

Det. Supt Weir—I think it has been shown that where there is fragmentation of law and there is not a consistent approach to law enforcement—and I think this has been demonstrated in the UK and other areas—there is the likelihood, and there is certainly a possibility, that it could occur.

Assistant Commissioner Barnett—I could use the analogy of telephone interception, which is only just coming to this state now after having been enacted in every other state for a number of years. It would quite rightly have been said that we were vulnerable and a more attractive environment in which to conduct organised crime because the state jurisdiction did not have telephone interception. So you can apply the same logic.

Senator FIELDING—The reason I raised that question—

CHAIR—Hold on, Senator.

Senator FIELDING—If I can just very quickly, Chair—

CHAIR—No. You have had a good go. Ms Ley has some questions.

Ms LEY—Thank you, Chair. I will ask just one question because we are short of time. The bikers who spoke to us this morning commented that media reports about their activities in South-East Queensland were highly inaccurate. What is your comment on the accuracy or otherwise of the media reports that members of the public read and of course members of the committee read as part of our backgrounders?

Assistant Commissioner Barnett—We are probably not in a position to comment with any authority on the press.

Deputy Commissioner Stewart—I think that is a question much better put to representatives of the media. It is interesting that we ourselves often, internally, have issues with some of the styles of reporting in the media and I was picking up that the biker group that were represented here today were saying exactly the same thing.

Ms LEY—But you read the same reports and presumably you know some of the facts.

Deputy Commissioner Stewart—I am sorry, you were asking me to comment specifically on the media reports in relation to those bikers?

Ms LEY—Yes, on the accuracy of those reports.

Det. Supt Weir—There have been some reports that relate specifically to incidents which have occurred.

CHAIR—Are these matters before the courts at the moment?

Det. Supt Weir—Some are before the courts and some have been resolved. Some of the reporting was in relation to specific incidents. There have been instances where members of a particular club have actually spoken to the media about it. It is across the board.

Deputy Commissioner Stewart—I would assume that, being members of the media, they are also covered by codes of conduct that the facts are no doubt correct. My perception this morning was that what was being raised was the style of reporting and the opinion pieces that came with that. Again, that would probably be much better put to members of the media.

CHAIR—I propose now to go in camera, so those in the public gallery and all the press have to exit. Only committee members and officers of the Senate and Hansard are to remain.

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

Proceedings suspended from 9.55 am to 10.50 am

[10.50 am]

KEEN, Mr Christopher, Director of Intelligence, Queensland Crime and Misconduct Commission

CHAIR—Welcome. I invite you to make a brief opening statement, which would be followed by questions from the committee.

Mr Keen—Thank you. You have already received our written submission, so I will not bother going over that in too much detail again. I will perhaps set the scene. The Crime and Misconduct Commission actually uses a market-based approach for when we look at serious and organised crime. When we go through that process, we are looking at the crime markets and from there we go and look at the groups that may be perpetrating those crimes. We look at things like illicit drug markets, we look at property crime, we look at money-laundering, and from there it is really a matter of whoever is actually involved in that they will be the subject of our intelligence and investigation action. I put that in context to show that we are looking very much of the actual activities and the markets when we target any particular group.

In looking at the reference for this hearing today, the situation with a number of legislative changes is that we have had a look at that and we are certainly following the South Australian initiatives with considerable interest. For us at the moment, we actually believe that we have a number of other priorities here in Queensland which we think it would probably be better for us to focus on than some of those other amendments. In particular, things such as our proceeds of crime actions, introduction of telecommunications—

CHAIR—The media want to come back in. Do you mind if they film you or take a photograph of you?

Mr Keen—That is okay. Looking at telecommunications interception and we are also looking at some of our special powers such as our hearings powers and also some of our other capabilities such as witness protection. In looking at some of the proposed legislation and legislation that is in action, one of the reasons we would be looking at seeing how that unfolds is to see how efficient and effective that is. When you are looking at some of the information in relation to, for example, consorting laws or prescribing groups as being outlawed, we would like to see how that effective that it is in the first place. In some instances we would be suggesting that the other actions that we have in place are probably more effective at disrupting serious and organised crime.

In our submission we mentioned the RICO type legislation. We think that needs rigorous examination just to see how it would actually go about working in the Australian context. It is the same for a number of the other initiatives that have been implemented. We believe that if you going to go through that process you need to work out how that is actually going to work in terms of resourcing and just how much there is going to be in the way of legal challenge. In some instances it might seem like a very good idea but the actual practice of it may not be as good as the original intention. That is why we at the moment are looking at trying to enhance our

current capabilities where we believe we have made serious inroads to some of the areas of organised crime.

I go back to the proceeds of crime aspect. We have had that in place for a bit over five years and at the moment we have restrained somewhere in the vicinity of about \$74 million. We are fully stretched on our proceeds side. To go back to a point I think Senator Fielding was asking about a bit earlier, out of that \$74 million restraint that we have, a bit over 19 per cent has got some links back to OMCG related activities. So you go through that process, the restraints. Then you actually have goods that are in the end settlements. At the moment that is lower. It is only one small indicator, but there have been OMCG related criminal activities caught up in that \$74 million, it is around 19 per cent, but with that also I would say that 80 or 90 per cent is involved with illicit drugs. There is a strong link there from our point of view.

I will open it up to questions because we have put a fair bit of the other information into the submission. I am happy to take any questions or elaborate on any of the points I have just made.

Senator POLLEY—Thank you for your submission and for appearing before us today. Could you give us an overview of the structures of organised crime here in Queensland and how that differs or compares with other states around the country and the territories?

Mr Keen—As far as the structure of organised crime is concerned, if we have that answer I would probably be quite a wealthy man. But the situation is that we actually go through a crime markets assessment. When we look at that, we look at the activities such as money laundering, drugs or extortion, and then we also look into the groups that may be involved in that. It could for instance in some cases be outlaw motorcycle gangs, it could be various ethnic groups, it could be, Lord forbid, lawyers involved in money laundering. One of the aspects that we find is that in fact it is very hard to measure because generally they do not tend to self-identify. The other aspect is that we see that it is a very fluid arrangement, that the profit motive that goes with serious and organised crime, particularly organised crime, is that they will work with the individuals that will be able to enhance their capability to drive greater profits. It is not as much a fixed enterprise as perhaps there were even 10 or 20 years ago. It is far more fluid. You will find that people that we target may come from, for instance, having links with the Middle East or links to South-east Asia or it might be established criminal networks within Australia. They will be quite fluid and move across those boundaries. The fact of the matter is that it is a very hard thing to measure.

You mentioned within Queensland. The other aspect that is generally well accepted is that Queensland crime is not just Queensland crime. It transcends borders, you move between states and also overseas. When you start looking at those sorts of aspects, it is one of the reasons why law enforcement needs to be very much coordinated and linked into both interstate and overseas agencies and federal agencies. That is where the Australian Crime Commission plays a major role because we need to be able to have that coordination and those links with other investigative agencies.

Senator POLLEY—In relation to the challenges that we face in combating organised crime across the country, my belief is that we need to have uniform laws. Have you got any recommendations as to the type of legislation that needs to be enacted at a Commonwealth level to address the growing and broad section of organised crime that is affecting our community?

Mr Keen—Probably not, but I suppose where I say a lot of our focus is at the moment is on some of the special powers. The hearings powers that the ACC has are highly efficient and effective. I think they were examined just recently to streamline that. I think uniform laws from a logical point of view would be desirable, but I think the practicality of getting those implemented would be a little more difficult. The other aspect I would go back to for us at the moment is that the priorities we see are going to be the proceeds of crime and implementing the telecommunications interception, and once we get those to then examine how effective the other legislative initiatives have been introduced are. To go back to a point I made earlier, I would say that one of the concerns if you are looking at some of the activities and saying, ‘Well, here is a group,’ and describing them as outlaw or to be barred. To do those sorts of investigations means you have got to put resources into that. The question would be is that any more or less efficient than just investigating the actual illegal activity itself.

Senator POLLEY—I am conscious of the time, but in relation to the South Australian legislation, in your view is that something that you would be supportive of the Queensland government taking up? Do you see that people will be displaced from South Australia and the potential for them to move into other states?

Mr Keen—The South Australian situation is best known by them. From their point of view, they believe they need to introduce that. I would say that the situation for Queensland at the moment is that we have a number of initiatives in place, particularly telecommunications interception in proceeds of crime, that we think are probably a higher priority and are going to have a more efficient and effective impact at this point in time. Whether further down the track we need to look at supplementing that with other legislative change, I think you are always going to need to examine that. But I think that with the South Australian legislation we are at the point where we are going to have the advantage of seeing how it actually plays out in reality.

Ms LEY—In your commission’s submission in 2007—and I am not sure if you were present then—the CMC talked about the Australian Criminal Intelligence Database and how it was not as effective as it could be because agencies did not upload all their intelligence onto it and so the information was not properly being shared around. How effective has it been, in your opinion, and how could it be improved?

Mr Keen—I believe at the moment they are going through various upgrades. One of the things I would say in relation to the Australian Criminal Intelligence Database is that there has been enhanced encouragement for agencies to put their information on there. Also, the Australian Crime Commission helps to coordinate a number of national forums where we get together to discuss various issues. That has also led to further encouragement for people to share information through the Criminal Intelligence Database but also through those forums.

Ms LEY—Do you feel it is improving in its ability to be a useful tool? Is there anything that could be done to improve its efficiency?

Mr Keen—I think it is better, but there is always room for improvement. It still comes down to the fact that it is only as good as the input. You need to have the different agencies responding and putting it in in a very comprehensive manner. You would probably need to check with the Australian Crime Commission, but I suspect they would say that some agencies are better than others and that can come down to simply our workload. A lot of police services, in particular,

have such high volumes that it is very hard for them to always put that intelligence onto the database in a timely manner.

Ms LEY—Do you think that once it is on the database it should be available to all agencies—obviously not to everyone within those agencies but as a rule be made available to all agencies?

Mr Keen—That is interesting. As an integrity agency, we have our own separate intelligence database. For internal use on our intelligence database we have both our criminal and our integrity agency functions. When we put anything onto the Australian Criminal Intelligence Database, on occasions we will put caveats on how it can be seen. As a general rule, intelligence is there to be shared and to be used by people on the front line. But there are some parts where the sensitivity of it needs to restrict it. So I think the commonsense approach is that you would try to share it as widely as possible. The need-to-know principle, which often gets quoted, can in fact be interpreted in different ways. The need-to-know principle, as far as I can see, is that if it is going to assist with the carriage of your work then you really do have a good reason to have that information available to you. The only thing that should stop that would be if there is particular sensitivity as far as perhaps some investigative action or legal action proceeding.

Ms LEY—Can you give us some examples of how Queensland having its own telephone intercept powers will help combat serious and organised crime?

Mr Keen—It is going to end up meaning that we are going to have a couple of issues where before we had to go strictly and find a federal offence for us to be able to get engaged. Some of the extortion matters are going to be a lot more straightforward. In some of the serious crime matters, murders and such like, Queensland police will perhaps be able to access that information. I think also where we start to look at some unique cases where there may be a substantial Queensland-only type entity that will give us the opportunity to look at, for example, their involvement in the production and distribution of illicit drugs.

Senator FIELDING—Firstly, would the unexplained wealth legislation that is in WA be something that you think would also be helpful in Queensland? The unexplained wealth principle has been used in various jurisdictions around the world. Western Australia and the Northern Territory have it. I am not questioning the actual detail of the legislation, just the concept of unexplained wealth. Is it something that would help in fighting organised crime?

Mr Keen—I am going to opt out and say the jury is still out, to be truthful, on unexplained wealth. We basically have to have a trigger offence before we start looking at our situation with proceeds with crime. I am still trying to see how efficient and effective the unexplained wealth legislation is in countering organised crime at the most senior levels. I think we have some trigger offence that actually gives you a bit more in the way of substance to investigate. At the moment, I notice, South Australia and Western Australia are going down that path, and we will certainly observe that very closely, but at the moment if you said to me, 'I've got a million dollars for you'—you could perhaps pass this back to Premier Bligh—'where do you want me to put it?' I would be saying I would put that into our proceeds of crime and into our hearings powers, because that is where we are finding the most efficient and effective input to both CMC and the broader law enforcement investigations against organised crime.

Senator FIELDING—Is there a link between serious and organised crime and corruption, and how big is it?

Mr Keen—One of the reasons the Crime and Misconduct Commission was put together from what was the Queensland Crime Commission and the Criminal Justice Commission was the fact that there is considered to be a link between corrupt activities and organised crime. We have had some instances of it. I would have to say that fortunately they have been few and far between. But there are links. I think that, by having an integrity agency that is able to pick up both sides of that, we can then investigate it. We have had references from, for example, the Australian Crime Commission where they have suspected a public official is involved in organised crime. Where they have come straight to us, we have been able to investigate it. We sometimes find there is a case to answer.

In other cases we have been able to show there was no substance to it. But we still have been able to move to the other side and investigate that organised criminal activity. For example, we had a case, operations Cygnus and Cyrene, where we were able to do exactly that. We were able to move on to what was a very useful and significant criminal investigation in relation to cannabis transportation and distribution.

Senator FIELDING—With the most serious organised crime, is there always the link of corruption? I am trying to work out if there is in the larger ones.

Mr Keen—I do not think at this point you could substantiate whether it has been in each or every case, by any stretch. There are a number of criminal enterprises where we have done successful investigations and have not actually come up with a corruption angle into the public sector. But we always look for it and we are always open to it.

Senator FIELDING—There was a question this morning about the motorcycle clubs' relationship with the police—and I do not want to put words in their mouth—that was along the lines of: 'Do you contact the police? What is the relationship like?' There was concern that they could not be trusted. Is that something that you look at?

Mr Keen—Queensland police come under our jurisdiction, as far as their ethics and the way they behave. Queensland police also have their Ethical Standards Command. We receive complaints in relation to police from time to time and we investigate those. So, from that point of view, if there are any fears that police are behaving inappropriately or criminally then certainly the CMC will pick up those and look into them very seriously. Having said that, any complaint that comes in needs not to be vexatious. It cannot simply be that you have been picked up and you do not like the colour of his hair anymore. But we certainly look at any of those complaints very seriously.

CHAIR—You mentioned earlier the proceeds of crime legislation. How effectively has it disrupted organised crime in Queensland? Are you able to give us a broadbrush view rather than any specific examples?

Mr Keen—Basically it disrupts them in the sense that they do not then have the resources to fund their next criminal activity. In other instances it means that they go from being a relatively big hitter to dropping way down the totem pole. Whilst they may still be involved in criminal

activity, it is on a far smaller scale. So we do have indications that it does disrupt their activities and how they can actually operate.

CHAIR—You mentioned earlier the unexplained wealth legislation. I think you said the jury was still out on whether or not it would be effective at senior levels. Does that suggest that it might be effective at less senior levels?

Mr Keen—I think if it were effective at any criminal level you would be quite satisfied. I suppose at the CMC we are very much looking at organised crime at the higher levels. That is where we do a lot of joint work with other law enforcement agencies, such as QPS. I think it is very hard for a lot of the police because they have such big volume crimes. That is one of the reasons we do have crime commissions established—for those longer, more protracted investigations and those that are more difficult to resolve.

One of the things about our proceeds of crime legislation is that we would also look to see where we might be able to take that a bit further in the future. For example, at the moment we do not have a great deal of coverage in relation to identity fraud and high-tech crime. One aspect that keeps coming through is that organised crime, when we look at it, is far broader than some of the more narrow reporting—for example, in relation to, in this case, OMCGs. There are a lot of criminal activities that we need to continue to focus on, and any changes to legislation need to reflect that broader interest and need for investigation.

CHAIR—With regard to the transnational nature of organised crime now: in your opinion, do we have enough resources to combat it at the moment?

Mr Keen—We could always do with more resources. I think one of the other interesting aspects of transnational crime—and we are just doing an update for our four-yearly crime markets assessment—is how the technology is changing so dramatically. That is something that we are really going to need to look at in the near future. I think that in three or five years a lot of the organised crime activity is going to be of a very different complexion to what we have now.

CHAIR—Maybe in that period none of us will dare use credit cards.

Mr Keen—Mine is pretty well bust anyway. I think you are quite right: identity fraud is a really scary thought when you start to find out the various ways in which people can access your information.

CHAIR—Thank you very much, Mr Keen. We will now adjourn for a few minutes.

Proceedings suspended from 11.13 am to 11.41 am

O'GORMAN, Mr Terry, President, Australian Council for Civil Liberties

CHAIR—Welcome. Thank you very much for coming along early. Do you have any comments to make on the capacity in which you appear?

Mr O'Gorman—I appear here in my capacity as the President of the Australian Council for Civil Liberties. I am also an accredited criminal law specialist in the state of Queensland and I have been practising exclusively in the area of criminal defence since 1976.

CHAIR—I now invite you to make a brief opening statement, which will be followed by questions from the committee.

Mr O'Gorman—My opening statement will be brief, because I see that this committee has heard in other hearings from what might be termed defence/civil liberties people. Typically in a proposal like this there are no people who occupy the grey ground. It is the law enforcers versus the defence lobby and the civil liberties lobby.

That said, from what I can gather this committee is looking into whether the South Australian so-called serious crime bill should be adopted nationally. It will not surprise you to hear that we say that should not happen. If you look at the history of the South Australian legislation and the genesis of it, particularly as has been outlined in the written submission that has been put before this committee by Professor Veno and Ms van den Eynde, and if that historical detail is correct, it would appear that this is a law and order, knee-jerk, political tub-thumping exercise that was generated in South Australia and is now sought as some model for Australia-wide legislation by law enforcers.

If the history as outlined by Veno and van den Eynde is correct then it is simply a local issue in South Australia which has resulted in legislation in that state. Our fundamental proposition is that there has been no case made out for the South Australian legislation to be the template for Australia-wide legislation. I do not intend to be too rhetorical about law and order and tub thumping, except to say my view is that at the state level over the last 20 years or so in this country, law and order has taken over from the economy as state parliaments recognise they have no influence over the economy. Politicians at the state level—be they in government or opposition—want to get a profile by constantly banging the law and order drum. That is the genesis of the South Australian legislation.

The only other comment I would make is this: to have the function creep, or the seepage, as one of the submitters called it, of using the template of antiterrorism law, of then using that as a model to introduce what is—however you dress it up—antibiker legislation is not only empirically not justified but, philosophically, utterly objectionable in the operation of the criminal law.

I want to talk about the empirical evidence or the lack of it. In no other area of public policy in this country are law changes framed without any empirical evidence or research to back them up. If the economy was run in the way criminal justice is, particularly at a state level, namely, as a knee-jerk reaction to a law and order issue without any empirical basis, our economy would be

in a worse state than it currently is. I simply urge, with respect to this committee, that fundamental proposition. This proposal, like many proposals in the criminal law, completely lacks any empirical base or empirical evidence that this type of legislation is even justified in South Australia, let alone that it should be seen as a template for nation-wide legislation.

The final comment I will make is in relation to seepage. When the antiterrorism suite of laws, particularly federal laws, was introduced post 9-11 in 2001, the justification for the huge increases or incursions into civil liberty was the atrocity of the planes being driven into the twin towers and then the atrocity of so many people, including Australians, being killed by terrorists in Indonesia. We were told by those who proposed the laws that the antiterrorism laws were in a category of their own. We almost had a Joh Bjelke-Petersen-ism of, 'Don't you worry about that.' It was almost promised: 'It will be kept in the basket called antiterrorism law; there will be no seepage into other areas of law.' Well, we are seeing the seepage, courtesy of the South Australian legislation.

My final comment is this: if there is a necessity for this legislation, if this committee feels that a case has been made out—and my fundamental submission is that no case has been made out, let alone a case based on empirical evidence—then it should, as occurred with the uniform confiscation legislation that spans all the states and territories and that complements the federal confiscation legislation, be sent to the Australian Law Reform Commission as a reference.

This committee and parliamentary committees of this type play a very valuable role in articulating important areas of public policy beyond the confines of the executive or the government of the day. But of the transcripts that I have read of the hearings that this committee has conducted in other states—and this is no criticism of the committee, because you are all members of parliament who have otherwise full-time jobs—there has been no serious research that I can see of any allied legislation in North America. Some of the submitters have made reference to the Canadian legislation and effectively said that it either has not worked or is irrelevant. There has been some reference to RICO in the US. Some of the submitters have said that the criminal justice landscape in the US is very different from that which exists here. There has been some reference to the serious organised crime bill introduced into law in the UK in the last two years but again, as I understand it, the submitters have said that that is a very different landscape.

While I said that was my last point, it isn't. My last point is this: if you look at so-called organised crime legislation in North America, in the UK and in Western Europe, the operation of serious organised crime legislation in those jurisdictions has to be seen against the basis that they have well-established human rights laws. In the United States they are in the form of an entrenched bill of rights. In Canada, in the UK and in Western Europe, they are in a statutory scheme of a charter of rights. We in this country remain in a minority of one in the Western world as we do not have a charter of rights. At least in those countries—in North America, the UK and Western Europe, where allied considerations have been considered—their formulation and their implementation have to be seen against the very strong background of an existing body of jurisprudence called a charter of rights. Those are my opening comments.

CHAIR—Thank you, Mr O'Gorman. We will proceed to questions.

Ms LEY—Thank you, Mr O’Gorman, for appearing before the committee. I assure you the committee is not looking just at the South Australian legislation to see whether it should be mapped across federally. In fact, we do not mention organised motorcycle gangs in our terms of reference at all, although they are among the issues that we are discussing. So I assure you our discussions are much wider. I am interested in when and to what extent the erosion of civil liberties is warranted in fighting serious organised crime.

Mr O’Gorman—It is warranted when it can be demonstrated by evidence, properly researched, that shows the existing suite of criminal laws is not working. That is my fundamental position. If you look at the development of criminal law in this country, at both a state level and a federal level, over the last 10 to 20 years—and one of your submitters made this point perhaps in a different way—if you look at the total aggregation as opposed to each step whereby the law has been changed in isolation and if you look at the totality of increased powers that have been given to law enforcement agencies at a state level and at a federal level over the last 20 years and add them up, it is a huge increase. It started in the seventies with telephone intercepts. It continued in the eighties with the establishment of the National Crime Authority, now the Australian Crime Commission, with all its coercive powers. It all then developed, at least in Queensland, New South Wales and Western Australia—and as a hybrid body in Victoria—into state based versions of the National Crime Authority/Australian Crime Commission. We have seen the development of confiscation legislation including, in more recent times, non-conviction based confiscation proceedings. So if you look at the suite of powers that law enforcers have got over the last 20 years and add them all up, you see they amount to a significant incursion into civil liberties. On the flipside, look at what protections there have been to ensure that this suite of powers is not misused, either individually or collectively, and you see there are very few protections that have been put in place.

Ms LEY—Isn’t it, for example, necessary to enhance investigative powers in the light of high-tech crime and cybercrime, the ramifications of which could never have been imagined 20 years ago?

Mr O’Gorman—Correct. But if you look at the law changes that have occurred only in the last five years in relation to high-tech crime and cybercrime, in particular the law changes to do with expanding the field of telecommunications interceptions, it is not as if the police have sat still or have been completely thwarted and frustrated in their never-ending search for greater powers. In the last two years federally, the Telecommunications Interception Act has been significantly expanded to cover, among other things, emails and encryption in mobile phones. There is currently a proposal that I know various law enforcement agencies are looking at to require people, when they buy prepaid mobile phone services, to provide identification details to enable the police to carry out interception tasks much more effectively. To those who say, ‘What do you do about giving the police the power to deal with emerging trends in organised crime?’, I say that, if you look at both a state level and a federal level at the continuing increases in powers that are statutorily and organisationally being given to the police, you see they are never found wanting. What the police as a lobby ask for in terms of greater powers, they almost inevitably get.

Ms LEY—Finally, what do you think of the investigative powers of the ACC?

Mr O’Gorman—I do not like them, but I accept that they exist. In my submission, the investigative powers of the ACC, and particularly the examiner’s powers, are extremely wide. They are used now, numerically, in much greater numbers than they were when those similar powers were first given to the National Crime Authority in the mid-eighties. It is rare for an examiner’s behaviour in an investigating hearing to be challenged in the courts. The reason for that is, firstly, that you, the challenger, need the money and, secondly, that a challenge to the Australian Crime Commission, using its coercive powers, particularly its examiner/investigative hearing powers, is in the civil jurisdiction so that if you, the challenger, lose you have to pay the Australian Crime Commission’s costs. That is why challenges to the investigative hearing powers of the Australian Crime Commission are very rare these days.

Senator FIELDING—I take it that there must be some existing laws that are used for serious and organised crime at either federal or state level that you would prefer to see repealed or wound back. Would that be correct? You have made it quite clear that the South Australian legislation is one.

Mr O’Gorman—I consider the South Australian legislation, for reasons I have indicated, to be not only obnoxious but simply duplicating existing powers that police have.

Senator FIELDING—Are there any other examples that you can give us that need to be either wound back or repealed?

Mr O’Gorman—Can I say, as a matter of reality, in the 30 years that I have been doing only criminal law that the only criminal law I have seen repealed was the march ban that the former Premier imposed in this state. I am not being avoidant; the reality is that once criminal legislation is put on the statute books it never gets repealed. That said, I consider that there is a serious inadequacy of the supervision that exists, particularly through the Australian Commission for Law Enforcement Integrity—the oversight body—particularly in respect of the Australian Crime Commission and the Australian Federal Police. I consider that is so poorly resourced and so statutorily weak that it does not do anywhere near as good a job as the Crime and Misconduct Commission, ICAC or similar groups do at a state level.

Senator FIELDING—Putting to one side whether they would be repealed or not, I am just trying to get a bit of a feel on whether you think there are other laws that should be repealed. Are you happy with them? Is it just the application of them that needs to be more justly applied? I am trying to get a handle on this.

CHAIR—Such as proceeds of crime and unexplained wealth—the two areas which have come before us.

Senator FIELDING—Unexplained wealth is another one but there are various examples. I know that you know them quite well.

Mr O’Gorman—I would certainly like to see the whole suite of confiscation laws repealed, but that is utterly impractical. In relation to confiscation, I would like to see the non-conviction based confiscation regime repealed because I think it works in a very unfair manner. To those who wanted confiscation laws, from where I sit, we say that a conviction based regime was working quite well. I think the current scheme, under which people can simply have their assets

frozen and taken away, even without being charged with any criminal offence, from a philosophical point of view as to where the reach of the criminal law should end, is utterly obnoxious.

In relation to federal telephone tapping laws, there is no prospect of those being repealed, but I would certainly like to see the protective mechanism introduced that was first pioneered in Queensland by a conservative government, under Premier Borbidge, namely, the Special Counsel/Public Interest Monitor model. I do not know whether the members of the committee are aware of it, but essentially that model was introduced in 1996 in Queensland, which proposed then in relation to listening devices, now in relation to nascent laws in Queensland concerning telephone tapping powers. When a law enforcement agency goes to a Supreme Court judge and seeks a listening device warrant or where a law enforcement agency goes to a Supreme Court judge, or an AAT member, and seeks a telephone tapping warrant, an independent barrister, who does not have a criminal practice, goes to the court and argues, in effect, a public interest position as to whether a telephone interception warrant should issue and, if it should, what protection should be in place to ensure that there are no unjustified intrusions into privacy.

Senator FIELDING—I was focusing on that issue first about whether there are existing laws that you think have gone too far. I do not want to put words into your mouth, but I think you think they have. I am happy for you to say, ‘No, that is not true.’ But am I right in saying you think there is a range of laws that you think have gone too as far as encroaching on civil liberties is concerned?

Mr O’Gorman—Yes, you are. If you add up both at state and federal level, and I say at state level, because of the increasing joint operations being undertaken between federal law enforcement agencies and state law enforcement agencies, the significant increases in police powers that have been given—this piece of legislation, that piece of legislation—over the last 20 years, you will see that the balance has so been skewed in favour of law enforcement agencies and so against civil liberties. A line has to be drawn and there should be no further increases, unless there is clear evidence based justification for it.

Senator FIELDING—On the one hand, you have civil liberties and, on the other hand, you have the issue of addressing serious and organised crime. When does one outweigh or encroach on the other and when is that balance right or wrong? You are putting forward here that we have gone too far in claiming that we are doing it for a cause—that is, tackling serious and organised crime—and that we are happy to trample over civil liberties in achieving that goal. You are saying that we have the wrong balance. Is that right?

Mr O’Gorman—Yes.

Senator FIELDING—Do you think your views are held by the broader community? Do you think you are out of step with the community’s views or do you think you are in step?

Mr O’Gorman—I do not think we are out of step with community views. It probably does not represent majority community views. But majority community views are often superficial, not well-informed because they are directed by media responses, by law and order politicians who paint a picture of crime in this country that is greatly exaggerated. One of your submitters

referred to the fact that the antifortification laws introduced in South Australia have been rarely used. I will try to answer your question more specifically.

My concern is that you appear to be asking me how I work out—from my point of view—when the balance between continuing greater police powers, on the one hand, and civil liberties, on the other, has been so tipped against civil liberties that enough is enough. I say that point has been reached but I also say that from this stage onwards, using your committee's reference as a focal point, your committee should not, with respect, endorse any further increases in police power under this umbrella of a serious organised crime reference unless (1) the evidence is there to show that there is a serious organised crime problem in this country and (2) the evidence is there—as opposed to rhetoric from senior police—that the existing powers are not working. My submission is that the evidence is not there.

Senator FIELDING—Thank you.

Ms LEY—Are you saying, Mr O’Gorman, that you consider there might not be a serious and organised crime problem in Australia at all?

Mr O’Gorman—I agree that there is an organised crime problem. I do not agree that the organised crime problem is anywhere near as serious as the law enforcers and certain law and order politicians paint it to be. But, more importantly, I submit and assert very strongly that the existing laws are more than adequate to deal with it, and I—

Ms LEY—I understand. I just wanted to clarify the point that you were making at the end of your response to Senator Fielding.

Senator POLLEY—I want to take up that point in relation to your observation about the level of serious and organised crime in the country. We have had evidence given to us in relation to, to put it in monetary terms, what is the quite staggering amount being derived from organised crime in this country in terms of drugs, internet fraud, identity fraud—the list goes on. Are you saying that you do not believe that the evidence that we have been given to date is anything more than hype from those people seeking to increase their powers and resources?

Mr O’Gorman—I think the evidence is significantly exaggerated.

Senator POLLEY—So then, in relation to the fact that you believe that the police in all jurisdictions already have enough power to deal with it, do you concede that perhaps a way forward would be to have uniform national laws?

Mr O’Gorman—For dealing with serious and organised crime?

Senator POLLEY—Yes.

Mr O’Gorman—No. Because if you look at the current national laws that we have, we have a de facto suite of national laws that, when added together, are equal to a suite of laws that deal with serious and organised crime. Firstly, look at the Australian Crime Commission. What does it say, in its submission to you, that it does? It says it uses its investigative powers, particularly its investigative hearings, to gather as much criminal intelligence as it can in order to be

proactive. It uses, in my experience as a criminal defence lawyer, its investigative hearings to try and gather evidence that it can then use to go out and do further investigations to carry out actual prosecutions. If you look at AUSTRAC, one of your submitters has given evidence as to the significant computer, and actual, powers of AUSTRAC to track money flows, not only after the event when a person is arrested but proactively and prospectively. So the point I am making is that if you look at the Australian Crime Commission, the role of the Australian Federal Police, the role of AUSTRAC, and the joint operations between the Australian Crime Commission and state based law enforcement agencies, we already have a de facto serious and organised crime legislative scheme in this country.

Senator POLLEY—Do you see, then, that there are other and better ways to tackle the organised and serious crime in this country? Can you give me a solution?

Mr O’Gorman—I do not acknowledge that there is a problem, let alone an insuperable problem. You can have whatever commissioner or deputy commissioner come along and say, ‘This is the amount of drugs that are not being interdicted. This is the amount of illegal money that is washing around the system.’ They can make that assertion. My submission to you is that I do not think they have made out the case, particularly to the extent that they would argue. They are saying that it is serious and, almost, out of control. Our position is that if there is such a problem then they have both the legislative and the physical resources to go out and deal with it. We hear this all the time. We hear consistently from Commissioner Keelty that a particular interdiction of a whole container load of drugs is the biggest ever. We keep hearing from serious and senior police that they are making bigger and bigger catches. That, to me, indicates that they are making inroads.

CHAIR—We have had submissions and evidence in relation to the growth of cybercrime in this country and the transnational nature of it. We have all sorts of levels of serious and organised crime. Do you anticipate that federal and state authorities will seek further powers to deal with cybercrime or do you believe that it is adequately covered by current legislation? We have heard evidence of identity and credit card fraud. We have heard all sorts of submissions in relation to how rampant it is and how fortunate our police forces here and overseas have been in capturing people. But it seems to continue unabated, and it may be the tip of the iceberg. As Senator Polley said, we have had a conservative estimate that the proceeds of serious and organised crime in this country are \$12 billion—I think that is from the ACC—a lot of it going overseas.

Mr O’Gorman—I have seen those figures. I do not remain in any way convinced that those who put those figures up have made their case. To answer your question about cybercrime and whether police will seek greater powers: inevitably, police will seek greater powers. If you look state by state and at the federal level, police and law enforcement agencies year by year are always being given greater powers. In relation to cybercrime, if the police can make out an evidence based case that they do not have sufficient powers to deal with cybercrime—as opposed to empty political banging-the-law-and-order-tub rhetoric—then they should be given extra powers. If they cannot make an evidence based case that they do not have enough powers, then they should not be given any extra powers.

CHAIR—Following on from a colleague’s previous question, do you accept that we have a problem with serious and organised crime in Australia?

Mr O’Gorman—I accept that every Western country has a problem with organised crime. On the evidence that I have read in the transcripts of the previous hearings that this committee has conducted in other cities, I do not accept that the organised crime problem is serious, let alone that it is out of control. Nor do I accept that any evidence has been put before you that the existing suite of police powers is inadequate to deal with it. The police can come along to a committee such as yours and throw figures of \$8 billion or \$12 billion or whatever around, and that attracts dramatic headlines. I ask myself often when I read it: where is the evidence that it is \$12 billion as opposed to \$1 billion and, particularly, where is the evidence that the existing powers are so inadequate that the police cannot go and do their job?

CHAIR—Do you accept that crime is organised in this country?

Mr O’Gorman—I accept that some crime is organised. I am not meaning to be flippant in this regard. When the term ‘organised crime’ is used, I always shake my head and say, ‘Well, these organised criminals are never organised enough even to have a lawyer available before they get pinched.’ They will always think of getting a lawyer when they are in the police station, if they are allowed to get one. In my cynicism about organised crime, I think that the concept is ‘egged up’—to use the term the English use. It is exaggerated. I accept that it exists. I accept that it exists in every Western country. It probably exists in every other country. I do not accept that it is serious to the extent that is out of control or to the extent that the police should get extra powers in the absence of evidence that the current powers are inadequate.

CHAIR—The term ‘professional legitimisers’ was used in referring to accountants and members of the legal profession who assisted serious and organised crime figures in avoiding detection or prosecution. It would appear, from that, that more attention may be about to be applied to those two professions. Is that something you are aware of?

Mr O’Gorman—I would make two comments about that. For senior police to say that lawyers and accountants are involved in organised crime is a hoary old chestnut that has been around for a while. It is typical for senior police to, in particular, want to kick lawyers. The second point I would make is that telephone interception powers have been in existence federally since the mid-70s, and in effect at state level for more than the last decade—with the exception of Queensland, which is about to get them. In that time, how many accountants and lawyers have been caught in telephone taps engaged in criminal activity? Not many. Certainly, from my interest in this area—and I read as much as I can around the country—very few lawyers are prosecuted. If the evidence had been there, police would have fallen over themselves to prosecute. It is a major feather in the cap for a police officer to pinch a lawyer. So I do not accept that there is some sort of systemic, or endemic, problem, particularly in relation to lawyers, and if there was, then why have more lawyers and more accountants not been prosecuted? The reality is, as all of you on the committee would know, the protection of client-lawyer communication—known as legal professional privilege—does not apply if the lawyer is engaged in a conspiracy or committing an offence with his or her client. So I just do not accept that it is a problem. It is easy for the police rhetoric to say there is but, again, and with the greatest respect, I urge that you should, if they cannot come up with the evidence, treat their comments for what they are: as empty, no-evidence-based rhetoric.

Senator FIELDING—You mentioned before that, from the reports that we have seen and the cases about major drug busts that have been made public, it is clear that inroads are being made,

and that therefore nothing else needs to be done. Is it not true to say, however, that those major drug busts have occurred as a result of some of the more recent laws that have been passed, ones that you probably opposed?

Mr O’Gorman—Can I, with respect, correct you in saying that I am not saying that nothing else should be done. I am saying that no further powers should be given to the police unless there is evidence justifying it. To answer the second part of your question: are the bigger drug busts as a result of the greater powers? From what I have seen, both of police announcements and of cases that I have done, no. I think they are the result of a more intelligent use by the police of their greater powers. I think you have a class of police now who are much smarter in the use of, particularly, telephone intercepts. You have a concept of policing now that is much more proactive than reactive. I think it is the changing nature of the way that police approach the investigation of crime—proactively joining up the dots before the dots appear as a completed circle—that is more the explanation for the greater pinches, rather than that the greater powers have been used to arrange greater pinches. If you look, in particular, at the larger drug busts that have occurred in the last five years, there have not been any particularly significant changes in the law in relation to telephone intercepts or the like. Rather, what Customs people would say, and what police would say, is that Customs are much better now because of their greater technical equipment in relation to X-raying. They are much better at being able to see things hidden in containers and the like. It is that, from my reading, that is leading to the greater success: the greater use of greater technical facilities that the police have now that they might not have had 10-plus years ago.

Senator FIELDING—There may be evidence to challenge some of those points of view, but as it is evidence that we heard in camera I will not go into it.

CHAIR—Thank you, Senator. Mr O’Gorman, I have one final question, if we could get this on the record. In the South Australian legislation membership of the association is the criminal offence, not the criminal act. I wonder if you could expand on that for us and tell us what the view of the Australian Council of Civil Liberties is.

Mr O’Gorman—To criminalise a person because they are simply a member of a bike group is philosophically, in terms of the way the criminal law should operate in a democracy, utterly objectionable. If we are going to go down the track of criminalising a person because they are simply a member of a group without any additional evidence that that person is actually engaged in criminal activity, then let us give up the pretence that we have fair criminal law in a democracy and let us accept the fact that we are going down the track to a system of criminal law that is utterly antithetical to democratic principles. Take the concept in South Australia that you can be the subject of a control order or the subject of potential criminal charges because you are a member of a bike group and someone within that group is engaged in criminal activity although there is no evidence that you even know of it, let alone are engaging in it yourself. It is utterly objectionable.

It was even objectionable in the terrorism legislation but it was accepted by some who would have otherwise rejected it because the legislation was about terrorism. Now we have, as I said at the beginning, police seeking to cherry pick concepts from terrorism legislation and put them into ordinary criminal law. If we go down that track we are going down the track of being a pretence of having a fair criminal justice system; we will not have one.

CHAIR—As there are no further questions, I would like to thank you for coming along today. I would like to thank all of the witnesses who have given evidence today. To the people who turned up in the gallery: thank you for coming. I thank Hansard as well. I now declare this meeting of the Parliamentary Joint Committee on the Australian Crime Commission adjourned.

Committee adjourned at 12.22 pm