COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

JOINT COMMITTEE ON THE AUSTRALIAN CRIME COMMISSION

Reference: Legislative arrangements to outlaw serious and organised crime groups

THURSDAY, 6 NOVEMBER 2008

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JOINT STATUTORY

COMMITTEE ON AUSTRALIAN CRIME COMMISSION

Thursday, 6 November 2008

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

Members in attendance: Senators Fielding, Hutchins, Parry and Polley and Mr Hayes, Ms Ley and Mr Wood

Terms of reference for the inquiry:

To inquire into and report on:

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

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

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

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

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

   i. society

   ii. criminal groups and their networks

   iii. law enforcement agencies; and

   iv. the judicial/legal system

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

WITNESSES

Committee met at 8.31 am

CHAIR (Senator Hutchins)—I declare open this public hearing of the Parliamentary Joint Committee on the Australian Crime Commission. This is the sixth hearing for the committee's inquiry into the legislative arrangements to outlaw serious and organised crime. The terms of reference are on the committee's website. The committee has held hearings in Adelaide, Perth, Sydney, Hobart and Melbourne earlier this year and will be holding a hearing in Brisbane tomorrow. The committee's proceedings today will follow the program which has been circulated.

I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee. The committee prefers all evidence to be given in public, but under the Senate's resolutions witnesses have the right to request to be heard in private session. It is important that witnesses give the committee notice if they intend to 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 them 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.

[8.33 am]

BRADY, Mr Peter, Senior Legal Adviser, Australian Crime Commission

KITSON, Mr Kevin, Acting Chief Executive Officer, Australian Crime Commission

MANNING, Mr Michael, Principal Specialist Legal Policy and Reform, Australian Crime Commission

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

ULRICK, Ms Kim, Acting Executive Director, Strategic Outlook and Policy, Australian Crime Commission

CHAIR—Welcome. Do you have any comments to make on the capacity in which you appear?

Mr Outram—I am executive director, investigation and intelligence strategies.

Ms Ulrick—I am acting executive director, strategic outlook and policy.

Mr Manning—I am principal policy and reform officer.

CHAIR—Thank you. I invite you to make a short opening statement, Mr Kitson, which will be followed by questions from the committee.

Mr Kitson—Thank you, Chair. As committee members are aware, responsibility for tackling serious and organised crime in Australia is spread among a number of agencies at state, territory and Commonwealth levels. The ACC's contribution is really to enhance law enforcement's understanding of and ability to deal with key criminal activities. In this regard we have access to a range of legislative powers. Our experience of these powers leads us to the conclusion that at the present time, and faced with the current criminal environment as we understand it, there is not a need for significant reform to the legislative suite of powers available to the ACC. This may not of course be the case in the future. The ACC believes it can continue to fight organised crime by making effective use of the traditional and non-traditional intelligence and policing methods currently provided for. Having said this, I note the ACC has identified some areas where there may be scope for consideration of some refinement to the tools available to law enforcement. I stress that we do not promote these as the only answer to a very difficult problem. They are just areas where the ACC feels that there could be benefits achieved through monitoring the experience of other agencies in using new approaches and mechanisms to combat organised crime.

In our submission, the ACC expressed interest in looking at the applicability of the United Kingdom's serious crime prevention orders, SCPOs, and financial reporting orders, FROs, as a useful way to monitor the activities of key persons of concern. FROs, in combination with the

easily applicable proceeds of crime legislation, may enhance our capacity to attack the criminal economy. As members of this committee are aware, the ACC, with its board's approval, is focusing its operational strategies on attacking the profit base of crime. As you would all know, the key motivator for undertaking criminal activities is predominantly the profit which these activities bring. The underlying strategy of the ACC is to identify serious criminal targets through identification of criminal business structures and money flows. For example, the identification of suspect money transfers and repositories is a key methodology for target generation and development. This is a proactive risk-based approach to identifying high-risk money flows and it does not rely on the identification of an original offence to start an investigation. The ACC has suggested that its ability to interrupt the financial affairs of suspected criminals may be enhanced through consideration of improvements to existing arrangements for the seizure of criminal proceeds at the Commonwealth level. The implementation of recommendations of the Sherman report on the operation of the Proceeds of Crime Act 2002 would strengthen the proceeds of crime regime.

It is true to say that the criminal environment has become more complex and legislative tools will need to evolve to match the needs of the criminal environment. Our key intelligence reports show the changing nature of serious and organised crime. We know that groups are typically flexible and entrepreneurial and come together and disband as the needs and opportunities arise. They are increasingly using professional facilitators to blur the lines between legitimate and illegitimate sources of revenue. Financial reporting orders could simplify the ACC's push to understand high-volume money flows associated with those involved in the more serious ends of organised crime. The ACC acknowledges that this type of regime would need careful consideration in the Australian context given civil rights and privacy concerns.

Outlaw motorcycle gangs, which are of particular interest to this committee, are more structured, enduring and more easily identifiable than many other groups that we deal with. However, they are not typical of the majority of organised crime entities that attract national law enforcement attention. While other syndicates or networks may share a common ethnicity or ethos, these are rarely defining characteristics. In reality there is little if any public self-identification by the majority of the key criminal syndicates which we target. I conclude by noting that our focus is on suspicious money trails and that the focus of our future activity and our concern about where we might improve and tighten legislation remains on those areas.

CHAIR—Thank you very much, Mr Kitson. Do any of your other officers want to add anything at all?

Mr Kitson—No, Chair.

CHAIR—We will proceed to questions.

Senator PARRY—Thank you very much for your opening address. I feel as though we have seen a lot of you guys lately over the last few months. I want to look at a broad scope aspect of the ACC and organised crime. Do you feel as though the state based police organisations and the Commonwealth agencies all work cohesively? Do you see any gaps? Do you feel as though they all work exceptionally well?

Mr Kitson—Our broad experience over the six years of the life of the ACC is that it works really very well, perhaps despite some of the inevitable challenges that come with our federated system. I think that we have worked together successfully. We have achieved some really quite notable outcomes despite the diverse approaches that are taken across the states and territories and across the Commonwealth. I do not doubt that, with some harmonisation of some legislation and with a continuing commitment—and perhaps in some cases a refreshed commitment—to information sharing and to a meaningful commitment of resources when we establish national task forces, we could continue to achieve more.

Senator PARRY—On those two points, resource sharing and information sharing, do you feel that they work successfully across the country?

Mr Kitson—I think it has all improved markedly over the life of the ACC. There is scope for considerable improvement in both, but I think that is a reflection of a maturing process as we all come to understand what information we need to know. As I have just described, our job is to understand and to share that knowledge of the criminal environment: how it operates and how it changes. It is inevitable that our understanding therefore of where the gaps exist in our knowledge is also evolving. It is also changing. So there is the obligation on us and the requirement for us to seek information from our partner agencies. Indeed that scope as to partner agencies is constantly evolving so there is probably no point in time when it is a static picture. I think we will always need to continue to strive to share information and we could never be satisfied that we have a comprehensive set of arrangements. I am confident that it is as good as it could be for the most part. There are areas where we need to work harder and areas where we would welcome greater assistance from some of our partner agencies and areas where perhaps our own legislation might enable us to share information better, particularly with the private sector.

Senator PARRY—Do you feel the agency is resourced well enough, in particular with IT equipment, to maintain this major role of a national approach?

Mr Kitson—The challenges of maintaining a modern comprehensive and cutting-edge information technology system are huge. There is no doubt that we will face challenges as we step into the future about the funding of the existing ACID and ALEIN arrangements. At the moment I believe they represent a good range of tools for us and for our partner agencies, but they will continue to require investment into the future.

Senator PARRY—Who would you say, whether it would be your agency or another agency, would have the best database and the best knowledge of outlaw motorcycle gangs and organised crime in Australia? Do you think there is one lead agency that would have more information and more knowledge?

Mr Kitson—I think the ACC's national OMCG coordination system offers the best aggregation of that knowledge. I do not think we have a particular view on whether any one or other of the state or territory jurisdictions has a better grip than others. Even those that perhaps have a more dedicated approach to or a more comprehensive understanding of motorcycle gang issues in their respective jurisdictions would not have a national picture. So I think it would be fair to say that the ACC's ACID, with its coordination system, would have the best knowledge.

Because that attracts information from all of our partners, I would be confident that that is the best system and the best body of knowledge.

Senator PARRY—Do you feel as though the integrity of each partner agency, the security of their information and the quality of their information that feeds into your information—and the dissemination thereof—are sound? Do you think that all has great integrity?

Mr Kitson—By and large, yes. There are always going to be challenges to information security. We deal in a tremendously difficult and challenging area. To make use of intelligence and information you have to disseminate it to someone for action. There is always the potential for either mishandling or deliberate misuse of information. By and large over the six years of the agency's life we have been pleased with the very low rate of concern about compromising of information. In terms of the quality of information that comes to the ACC, we are always dependent on how the other agencies compile their information, how they express their information. There are constant challenges for all of law enforcement, particularly when we come to share information nationally, about the standardisation of terms. I think we said to this committee in a different context that different jurisdictions might record methylamphetamine differently; they might record something as ice or as crystal methylamphetamine. That presents some challenges in validating the quality of information that we get.

We have invested a fair amount of effort over the last few years in trying to provide some consistency and guidelines, particularly to our policing jurisdictional partners, so that they can put information into the Australian Criminal Intelligence Database which has a broader level of consistency. That is why we have some of the tools that we do that sit across ACID. It is so that we can, if you like, even out those bumps and have a greater level of confidence that we are comparing apples with apples.

Senator PARRY—I want to move to a comment in your opening remarks about the focus being on the money trail. Obviously, you have a close working relationship with AUSTRAC. You say that is your focus. Is it your focus above and beyond everything else—you are not really gathering other intelligence; it is just simply the money trail and the proceeds of crime?

Mr Kitson—No. It recognises, as I said in my opening statement, that organised crime is for the most part about profit. They are not generally about a better quality of firearm or a better quality of drug. Perhaps there is something of that in there but by and large it is about the balance sheet for them. Our focus then is not necessarily about the predicate activities or even some of the individuals involved in it, but recognising that, wherever the criminal activity takes place and whatever crimes are involved in it, if we can take away the profit benefit then we are having more impact than we would through any number of—and I hesitate to use this term—minor charges. If we drive at what is the profit motive here, I think we will be more successful in unpicking and deterring—and perhaps even in the crime prevention area.

Mr Outram—The approach we are taking is, as Mr Kitson has said, to look at the money flows to identify what you might call higher risk money movements. It is almost a top down approach, but we are not ignoring the ground up approach, which is very much about the intelligence that the states give us. If the states say, 'That is all very interesting, but these are our main organised crime priorities and problems'—for example, we might think it is OMCGs and they might have a different view—then we will listen to that. So we have a process for collecting

that sort of information as well. That feeds in, if you like, to the analytical processes. Yes, there are a lot of strategic and aggregate datasets but there is also that ground up intelligence about particular individuals and groups that are causing problems. The trick is how to superimpose those different views.

Senator PARRY—Can you give us a dollar value for what would be traded with outlaw motorcycle gangs? Is there any quantum you can use at all?

Mr Kitson—I do not think we would wish to give that in open session. We might go to another session, if that is acceptable to the committee.

CHAIR—If that is the only question that you want to answer in camera, I think we would be happy to receive that in writing as confidential or next week.

Senator PARRY—We are seeing you next Monday.

Mr Kitson—Next Monday would be the most appropriate time I think.

Senator PARRY—You can get the calculator out between now and then. Thank you very much.

Mr HAYES—I see part of the role of this committee is looking at, in conjunction with the ACC, the contemporary tools that are necessary to fight serious and organised crime. I have to say there is a bit of frustration. We get a series of commissioners who appear before us and it is very hard to get any two people to agree, yet they are effectively at the front line and fighting for the community against serious and organised crime. Since we have the ACC here, which is often referred to as the country's premier law enforcement agency, I would be interested in knowing—and I know in your submission you have dealt with SOCA and overseas experiences—in relation to where we sit in relation to serious and organised crime, what would be, without being sensitive to the politics or anything behind it, the most effective scheme of law enforcement legislation that would be of benefit to this country?

Mr Kitson—That is a very broad question, indeed.

Mr HAYES—I have not been able to get anyone to answer it so far.

Mr Kitson—I am grateful for the opportunity to answer it then. It is, indeed, a very broad question. Our perception would be that it is perhaps not necessarily about a single piece of legislation and it is not necessarily about the greater use of existing powers, but perhaps the concerted effort towards national priorities by all of the states and territories in combination with the Commonwealth.

The ACC's mandate includes the responsibility for developing a set of national criminal intelligence priorities, which we recommend to the board each year and which the board makes its own commentary and adjustments on. That has some impact over the menu of work for the ACC but, arguably, it does not have particularly significant influence over the work of the jurisdictions and the level of resources that are focused nationally towards those nationally identified criminal intelligence priorities.

We would recognise that in each state and territory there are peculiar challenges to law enforcement, there are different political pressures and there are different natures of criminality. But I think we would be more effective dealing with some of the national challenges that are before us if there was a flow-down effect, a cascading effect, from those national criminal intelligence priorities across the resourcing commitments of the state and territory jurisdictions, particularly in terms of gathering information and intelligence to fill those gaps in our knowledge.

Mr HAYES—We have heard a fair bit so far about unexplained wealth legislation, particularly as introduced in Western Australia and further modified and adopted in the Northern Territory. Other jurisdictions have other aspects about proceeds from crime and how that is implemented. You talked earlier in your evidence today about being able to follow the money trail. Would uniform legislation on unexplained wealth have a material effect in addressing the issues of money associated with crime?

Mr Outram—I believe it would. I think following the money is obviously very important from the point of view of identifying the areas of risk and the individuals who represent the greatest risk, but then it is a question of how you actually do anything about that, given the size of the criminal economy and the amount of money that is restrained and forfeited. There is a big disparity, so the performance would appear to warrant some improvement, I guess, in terms of the way we recover money.

At the moment there is a range of legislation that could be used. A model that we looked was the Criminal Assets Bureau in Dublin, Ireland. They are regarded as the most successful asset recovery agency in Europe, as I understand it. What they do is apply the Irish tax legislation, proceeds of crime legislation and any criminal legislation they can. So they have a multi-agency approach: they bring in tax commissioners, senior DPP type lawyers to do the proceeds, and Garda Siochana police officers. They told me, though, that in probably 60 or 70 per cent of cases they opt for the tax act because it is the most effective tool to remove the profits from crime. That probably gives you an idea that, yes, removing the illicit profits is the trick, and they were very pragmatic in their approach. So if the undisclosed income legislation was the kind of tool that could be applied fairly simply then it would be very effective.

The difficulty is that because of the complexity and sophistication of some of these business structures and the intermingling of legitimate and illegitimate sources of income, it is very, very difficult for an investigator to disentangle all that to the satisfaction of a court, where you can prove reasonably that that particular amount of money over there is from an illegal source and that money over there is legitimate. That is the difficulty we face. And, of course, acquiring the people with the skills to understand money, money flows, business structures and the way that businesses and markets work will be a big trick for law enforcement down the track.

Mr HAYES—Again following on from earlier evidence from the ACC, if we are talking about a bunch of corrupt entrepreneurs out there, effectively anything we can do to assist in following the money trail would not only have a material effect in terms of prosecutions in those areas but would also significantly assist in preventing serious and organised crime. It would take away the incentive, wouldn't it?

Mr Kitson—I would agree. We have started to phrase a lot of our internal dialogue around that issue of serious crime prevention and to focus very much on that issue, that if there is an evident downturn in criminal profits then it acts as a discourager, a potential preventer, of organised crime activity. It may perhaps deter those who want to get into it and it may make it more difficult for those already engaged in it, forcing them to take greater risks than they currently do and therefore exposing themselves to greater risk of detection and prosecution.

Mr HAYES—The other aspect is that—and Michael has raised it in terms of considering what has occurred, say, in using the tax act in Ireland—effectively, this committee is also seeking advice. What areas of existing legislation, not necessarily in this country but elsewhere, that have had a material effect in acting against serious and organised crime should we be looking to? It does seem to me that, whilst we have the parliamentary joint oversight body of the ACC and we can sit around and have dialogues between one another every now and again, we still should be taking soundings. You guys are the premier law enforcement agency out there. We should be kept up to speed about what are contemporary tools for policing and for combating serious and organised crime in particular.

Mr Kitson—That is why we focused in our submission on the UK legislation. We had a look at legislation in the United States and Canada, and that which we thought had the greatest likely applicability to the Australian context was the UK's approach. I think you would be aware that the UK's laws are have not been enacted long enough to give us a decent body of information on which to judge its success or otherwise. Indeed, in our dialogue with them, they also observed that it is too early to make a judgement. But the reason that we identified particularly financial reporting orders as something that was of interest to us is because it deals with the capacity of some of the most enduring and resilient organised crime figures to maintain their wealth regardless of the individual or concerted efforts of law enforcement across the country. If we shift the burden of proof so that people have to explain unexplained wealth then there may be some benefit to us in trying to understand how they are operating, who they are operating with and what they are doing with those assets. Part of our approach is to look at the efficacy or otherwise of that legislation, but I suspect that that we are a year or so away from having an understanding of how that operates in their context and, when we try to apply that across the Australian context with some of the difficulties we might have with a non-unitary law system and the different state and territory policing agencies we have here, I think there will be a fair bit of study and work to be done in that area.

Mr HAYES—But the level of serious and organised criminality presumably everywhere other than in Tasmania would have a lot in common. As you would with any business, you would exploit the lines of least resistance in whatever business you are in and what is going to deliver you greater profits. Presumably, if we simply go on a state-by-state basis in our response to serious and organised crime, we are going to have gaps everywhere.

Mr Kitson—That is why we argued strongly for improved coordination and improved commitment across the nation to deal with some of the targets. We have recently, with the board's approval, established a number of national task forces and national targeting projects that look to enhance that cross-jurisdictional coordination of effort against some of the most significant targets we have available. But there are always going to be more targets than resources at any given time. We sense that the key to the future is looking beyond the state and territory policing agencies to make sure that we properly take the information that is available

from AUSTRAC, that we consider the role of the ATO, ASIC and APRA and various other regulatory bodies as well as, obviously, Customs to essentially surround our targets with the greatest powers that are available. It is not simply a law enforcement solution here.

Mr HAYES—Are we fast moving towards a period where it is proper and appropriate for the Commonwealth to show greater legislative leadership either by direct legislation or by sponsoring models and complementary state and territory laws in this regard? I have in the back of my mind the success in establishing the national DNA database and the national fingerprinting library—those things that are Commonwealth facilitated but are nevertheless underpinned by complementary state and territory legislation. For something as significant to society as serious and organised crime, and given the dimensions of it, should we be doing more at a Commonwealth level by sponsoring consistent and uniform legislation in that respect?

Mr Kitson—I think one of the major challenges—and this may sound as though we are chucking up our hands and saying that this is all too difficult—is that there is very little consistency not only in Australia but internationally about how we define what serious and organised crime is. It is tremendously hard to define. We can characterise it as having a number of features: that it is involved in illicit profit; that it has a level of sophistication; and that there are elements of intimidation involved. But the drafting of any legislation to deal with something that is so ill-defined, and is likely to remain a problem that is challenging to define, will continue to frustrate us for some time.

Mr HAYES—Narrowing it a little bit, would bringing it back to unexplained wealth be a start—where there is some consistency amongst the states, territories and the Commonwealth in our application of unexplained wealth provisions?

Mr Kitson—Yes.

CHAIR—On that point, we have heard throughout the hearing—and you explained it then, Mr Kitson—about the difficulty of trying to define serious and organised crime. We have heard that sometimes there is not 'Murder Inc' or 'Crime Inc' sitting in some office in Pitt St or Collins St. They will be involved and then for two or three years they will not be involved and somehow or other the money gets legitimised. In fact, you used a term that we were not familiar with: 'professional legitimaters'. Is that what crime is—there is no sort of crime figure who sits there in Pitt St or Collins St and organises things? Is it a bit like that bust a few months ago with the Sergei family with the Griffith connection. They see the exposure of it in the 70s and now 30 years later they are involved in that? Is that how one should look at organised crime—that it is not as continuous as one might think?

Mr Kitson—I certainly would not characterise it as having any kind of coherent or cohesive framework that guides it. There are undoubtedly some significant crime figures or identities, as the media would have it sometimes, who remain and have remained for a number of years significant in their respective domains and who have both national and international connections. I think it is a reasonable picture to paint that there are those who will be active for an intense period and then may be largely inactive or apparently inactive for a longer period. Organised crime at its top end is a patient game. We have seen any number of instances of major importations that will go for months into years where the commodity that the organised crime group initially seeks is not necessarily the commodity that they end up receiving. It is a fluid and

dynamic environment—it is why we deliberately use those terms. It is perhaps because it is very hard to pin down what they are doing at any given time.

We have adopted an approach, which we have mentioned to this committee in the past, under the name of Sentinel, which is designed to give us that capacity to understand where those significant nominals exist and how we can best bring to bear the powers of all of the agencies and regulatory bodies that we mentioned a short time ago for a better understanding of what they are doing, how they are doing and to look at where the greatest vulnerability is. As they look for the path of least resistance, we need to equally look for their weak points as well, and that may well be in their tax regimes, or in their company structures or in their facilitators.

Notwithstanding the experience of the Sergi and Barbaro families and other significant names that are probably familiar to the committee, we probably need to step away from the concept of a grand puppet-master somehow coordinating this activity nationally. There are undoubtedly people who, at the flick of a phone switch, can command resources and attention and support across the country and internationally, but I think we would characterise it as being much more entrepreneurial, much more available to anyone who really has the commitment to seek out organised crime profits rather than necessarily being the domain of a select few.

CHAIR—Can you expand on the term 'professional legitimisers' and what we would need to know to understand that? The other thing I would like to ask is: in serious and organised crime, are there quite legitimate businessmen and women now involved in that? In the past 20-odd years people have been alleged to be the—you said there is no grandmaster, but there are some legitimate business entrepreneurs that are on the fringe—if not on the fringe then heavily involved in it—and, in a way, laundering the money that way?

Mr Outram—Yes, we see a lot of intelligence that supports that sort of picture. A lot of what you might call the more sophisticated criminals—they are the ones who tend not to get arrested or prosecuted—tend to be at arms-length from the actual transactions in terms of the commodities that are imported or distributed or what have you, and therefore they are harder to the attack. They do tend to hide behind what appear to be legitimate businesses. In some areas they have preferences for particular business sectors and the ACC, as you would be aware, has been doing a bit of work around one or two of those particular business sectors. So they have the ability to distance themselves from the criminal activities and the traditional investigative methodologies to collect evidence of, say, the importation of drugs. It is likely to get some of the gophers and runners and those sorts of people with their hands on the commodities, and they will be the ones who end up facing the criminal briefs, but generally speaking the organisers tend not to be caught up in a criminal brief.

The 'legitimisers' that these people use that we see, and we see it through the way that we try and apply our coercive powers, for example, are in the way that they run their businesses. Of course, you would have to say accountants are a really important tool for the conduct of criminal enterprises that generate a lot of money. At the end of the day, we are interested in those that generate the most wealth. How you deal with that wealth—how are you hide who the ultimate beneficiary of that wealth is; the structures you have to put in place both nationally and internationally to do that successfully to avoid detection, so you do not set off the alarm bells, so that if law enforcement agencies do become aware they are going to find it really hard to follow the trail and identify who owns all of that wealth and where it all went—requires some very

clever people with in-depth understanding of the legislative regimes of various countries, of the international money system, of financial tools that might be available every day. The financial services sector is legitimately putting new products on the market to help people manage their wealth, but of course those tools can also be used by organised crime. Some of them are extremely complex and it is hard for experts, even in the law enforcement field and probably in the financial services field sometimes, to understand the complexity of some of those products that are out there, so they rely very heavily on accountants.

Of course, like anybody in business, you would rely heavily on lawyers as well for expert advice. I am not suggesting for a minute that that is inappropriate, but it is simply a fact of life. They can afford, because of the money they have, access to the best QCs and others and so of course that gives them an additional layer of protection. So they are some of the difficulties that we obviously face.

CHAIR—What, that they are quite professional?

Mr Outram—Absolutely.

CHAIR—We are not matching them with that professionalism?

Mr Outram—If someone is running a legitimate businesses, for example, that is worth a lot of money, and a lot of that money is moving around the world, then you need to follow the money trails and get the information you need to understand how all of those processes are being affected, the interaction of all the relevant laws around the place. You have to get access to all of the accounts, the profit and loss statements and anything else, and work back to the point-of-sale of whatever it is they are selling legitimately, before you can then to start to say, 'This is clearly what the net value of this business is and so, therefore, this has got to be undisclosed income.' I would suggest it is an incredibly complex problem even for a professional accountant to do that, let alone law enforcement officers who do not have access to all of the information they need because it may be hidden across different companies, it may be structured through different corporate arrangements, different directors et cetera. It is the complexity that poses the challenge.

Their ability to navigate through those sorts of so-called criminal enterprise structures and to build them with professional assistance probably gives them something of an edge on law enforcement's ability to disentangle that, simply because of the amount of resources and time we would need to do that in every case. So it is a question of picking the right targets—that is what we are focusing on—picking the threats that represent the highest risk to the community and the country. That is the approach. We cannot take them all on.

CHAIR—So I assume that, when you get to a case, it is the Commonwealth DPP who is the prosecutor?

Mr Kitson—Yes.

Senator FIELDING—Is serious and organised crime in Australia on the increase?

Mr Kitson—I think it would be very hard to make any meaningful judgement about that. That might sound disappointing coming from an agency charged with the responsibility of estimating our criminal environment, but I referred earlier on to a maturing process of understanding and working with our partner agencies. What we have seen, particularly over the last three to four years, is a much greater understanding of what it is that we are looking at. We might understand something more about the way in which we seek to identify organised crime groups—the networks as they form and unform. I think it would be very easy to look at some of the data we have got, and to say, 'Yes, it has expanded quite significantly over the last five, 10 years, 15 years.' But I think what has actually happened is that we have got better at understanding where it is. Would we be in a position in another five years to say, 'Let's benchmark against 2008 and see where we stand?' I do not know because I suspect that, in the next five years, we will also increase our sophistication of understanding how organised crime is operating. We will get more data from our jurisdictional partners; we will get more data from the private sector that will help us to understand parts of it that are probably currently unrecognised as being organised crime activity. Private sector necessarily protects knowledge about its losses and might write off something as a bad debt, which we might understand to be the result of fraudulent activity. I struggle to answer the question in pure terms, but I think that we as a community are now getting better generally at understanding the nature of the problem and in dealing with some of its more serious manifestations.

Mr Outram—Regarding the future, we are engaging with some academics around the criminal economy, as has been reported. That may offer a prospect. If you can get a handle on the size of the criminal economy, that of course may give you benchmarks over time to then estimate whether or not it is increasing or decreasing. That in itself is a challenging proposition but, as I say, we are engaging with some leading academics, talking to them about whether or not we can introduce economic modelling in and around AUSTRAC data, data from the banking sector and so forth. But there is the cash economy, and that is the challenge. We do not see how big the cash economy is. An example that was made public was in our Gordian task force where airline pilots were taking bags full of cash out of the country. They were the ones we saw, but of course we do not know how many of those kinds of transactions are taking place that we cannot see. So it is very difficult to actually pin it down.

Senator FIELDING—What are some of the outworkings of organised crimes that you are looking for? For example, we have just seen again some of the shootings. What is your gut feeling: is it increasing or decreasing? I know it is very hard to say at any one stage, but over a period—you have been going for five years—

Mr Kitson—Six years.

Senator FIELDING—You must have a gut feeling as to whether it is increasing.

Mr Kitson—I suspect the level of sophistication is increasing across some of our more enduring targets—those that perhaps we have had in our sights and in the sights of our predecessor agencies and in the states' and territories' agencies for some years. Perhaps the thing that would point to a broad-based increase—and this sounds terribly glib—is globalisation. The rapid spread of technology and communication means that it is really very much easier for a wider range of people to in a sense transact nationally and internationally than perhaps it was five, 10 or 15 years ago. So there would be, I think, an exponential increase in the numbers of

people who are probably involved in this. Whether that necessarily increases the level of damage to the Australian economy, whether it diffuses the level of profit available to each of those involved in it, is something that we simply do not understand at this point.

Senator FIELDING—Part of the reason for asking that question is because most Australians would like to know that as well to a certain extent. Then it comes down to what the urgency is to have better tools, better legislation, part of the questions that were asked before. Otherwise the urgency for that dwindles to a low-level issue if it is not increasing. I still think it is important because, frankly, organised crime and serious crime unsettles everybody and makes people feel less sure about how well as a nation we are doing things. So it is a genuine question for me.

Mr Kitson—Perhaps we would see it in these terms: regardless of whether it is expanding or not, we estimated publicly earlier this year that the cost to the Australian economy was at least $10 billion. Our current thinking is that that figure is conservative and that it may be significantly higher than that. In anyone's language, the loss to the legitimate economy of that money, and that does not necessarily take into account the social costs and the opportunity cost of that, is a significant issue that requires national attention.

Senator FIELDING—Yesterday we have seen the budget surplus decrease by that much. You can see now the interest I think Australia would have been trying to equip and make sure that the right tools are in place. The beauty about having Australia is different states and that is great because a state could actually have a law that could work quite well that we should roll out nationally in a nationally coordinated way to make sure we are doing all we possibly can. So I appreciate your submission.

At some stage I would like the commission to put together a table of each state and the tools they have got to fight organised crime. Obviously one of the things that work against this is civil liberties or privacy, but at the scale underneath on each one of those, and then logically we can look at it and say, 'Why in the heck aren't we doing this across the country when we are already doing it in one state?' Given the amount of dollars and given that we are seeing the budget surplus go, I think that some urgency on this issue. The ACC is the right body to put that together. I can well imagine that it is very difficult being the ACC and having to rely on the states, and telling a particular state maybe what they are not doing as well as they should does not actually help, so it may need this committee to actually recommend some of those things that allow us to get to the bottom of this. I would appreciate it if you could come back and outline that in a table and go through it and maybe weigh up the percentage of effect would have of reducing organised crime within Australia.

Mr Kitson—I think a good deal of work has been done in relation to that and perhaps our colleagues in the Attorney-General's Department might address some of those issues when they speak to you later this morning. There is within the Commonwealth environment a particular committee that is looking at how we may seek to restructure a national approach to targeting organised crime and that we have perhaps a more rigorous policy framework. But I would prefer perhaps to defer to our colleagues in A-G's.

Mr Outram—I should say also that there is a coordination occurring across the states under the Australia and New Zealand Police Advisory Agency that was recently established by the state police. We have a seat on one of the subcommittees, the crime committee. The police

commissioners have asked for that committee to create a national triaging system, if you like, to determine which groups and individuals represent the highest threat nationally so that we can agree between the states and the Commonwealth on the targets we should take on, based on an agreed risk-threat assessment methodology, so that everyone is actually on the same page.

Senator FIELDING—In addition to that—and I am happy for you to say you are not going to do it, but I think that you have raised some legitimate issues like the financial reporting order type system—perhaps there could be figures in the table about how valuable that would be in fighting organised crime. I know there is a privacy issue there as well if you slap too many of these things on, but I think we need a handle from the experts, who really live and breathe this sort of stuff, to help guide the committee so in the end we can make a decision. I think that would be quite useful. I have one other area to go to, if I could. I don't know whether you wanted to respond to that first one on the international part, very quickly?

Mr Kitson—In terms of the table?

Senator FIELDING—Yes, the table, adding what is best practice around the world—or not best practice, sorry, but other tools and their percentage of effectiveness.

Mr Kitson—I think we can have a good go at bringing something to bear.

Senator FIELDING—What is the link between serious and organised crime and corruption? Is there any link? It is small, medium or large? I am very interested in this serious and organised crime and its link with corruption, at whatever level you can talk about. I just want to know generally. Is there a link between serious and organised crime and corruption?

Mr Kitson—Corruption is one of the defining characteristics in the way in which the we identify and describe organised crime in the act. We see that corruption is a key facilitator to the most successful enterprises. The way in which we see or describe it is many and varied. It can be through coercion, through turning a blind eye or through the deliberate insertion of people who are sympathetic to a crime group's aims into an organisation, and it may be those who work in an organisation who wish to work with organised crime. Whether that corruption exists in law enforcement agencies and regulatory agencies or in the private sector is perhaps irrelevant to organised crime. They depend on insider knowledge.

Senator FIELDING—To help a bit, I am a strong believer that any great nation needs to make sure that it has freedom in the political system, the media and the law enforcement area, and any one of those three has any level of corruption—and I am not suggesting there is—causes real problems. I think it is a very tough job. Being in law enforcement is an extreme tough job and very difficult, so I certainly do not want to be sitting here accusing, but I am interested to know about that link. How do we know as a country that we have that in order? How would we ever know?

Mr Outram—I will talk from personal experience. I have been in law enforcement for well over 25 years. Corruption is an ever-present threat when you are investigating organised crime because your operatives, whatever they do at the interface between law enforcement and organised crime—sometimes they are handling informants—are actually developing a relationship with a criminal, or you may have an undercover operative developing a relationship

with a criminal. That is the highest risk end of the spectrum. As Mr Kitson said, there is always the risk of infiltration as well. Our greatest asset is our information, and of course that is the biggest prize for organised criminal groups. If they can get that information, they will understand what we are currently doing, who we are doing it on and what our methodologies are. So it is an ever-present risk.

In terms of what we do to mitigate the risk, I think every agency would have their own range of anticorruption measures. We in the ACC have our own. We have an anticorruption framework that we use. We do anticorruption resistance reviews—we borrowed the idea from the ICAC. We talk regularly with ACLEI and the ACLEI commissioner and we have our own internal audit and risk management processes et cetera. I guess that every police force you look at around the country will have their own integrity regime. It sometimes includes an integrity commission type body within the state or what have you. That tends to be the arrangement in Australia and I think that is pretty strong compared to some other countries. There is a lot of oversight. But we should never delude ourselves that it is not an ever-present risk and a threat. You can never be corruption proof in this environment.

Senator FIELDING—Back to the original question, with serious and organised crime is there always an inside person with that? Out of curiosity, is it 50 per cent of the time, 20 per cent of the time, 90 per cent of the time? At any level is it—

Mr Kitson—I think that you would have to describe it as a key feature of how they facilitate their business. I think that it perhaps would be misleading to offer a percentage to you on that.

Mr WOOD—You mentioned the figure of $10 billion before, and I know that has been in the public domain for some time. Is that specifically for serious and organised crime or does that include all crime such as shoplifting?

Mr Kitson—No, serious and organised crime.

Mr WOOD—Have you got any breakdown for that? I assume that most of it would be drugs or drug related.

Mr Kitson—Yes. Drugs are the major illicit profit driver. Very few things can give you the same kind of profit margin that illicit drugs can and the ratio between, if you like, the wholesale or manufacturing cost and the retail cost is so large that it is likely to remain for the foreseeable future as the major generator of criminal profit.

Mr WOOD—What is the budget of the ACC at the moment?

Mr Kitson—Roughly about $87 million.

Mr WOOD—Have there been cutbacks recently with that budget?

Mr Kitson—We have had to take the efficiency dividends that have been applied across the Commonwealth and we have had some tied funding that has lapsed that has taken our funding from somewhere above $100 million down to around $87 million in the next financial year. The appropriation for 2008-09 is actually $96.663 million.

Mr WOOD—And that is for what period of time?

Mr Kitson—For the 2008-09 financial year.

Mr WOOD—And previously it was—

Mr Kitson—That is $2.7 million less than the previous year and that is definitely related to the two per cent efficiency dividend.

Mr WOOD—Where are those cutbacks being made?

Mr Kitson—We have made most of our cuts across all of our program areas. We have had to release some contractual staff particularly in the ICT area. We have found efficiencies in a range of areas including our communications budget, our travel budgets, our fleet budgets and we have looked at some accommodation efficiencies. But we have taken a little bit of a hit in some staffing numbers.

Mr WOOD—What are the staffing numbers? What were they previously and what are they now?

Mr Kitson—We currently have 662 staff. I think, as this committee is aware, our staffing is a reasonably fluid issue in that it goes up and down. We have task force members coming on board and leaving us at any given time. We released something in the order of 50 staff between about June and September this year. The majority of those were non-ongoing, non-contractual staff mostly related to various short-term projects.

Mr WOOD—You say 50 staff were released. Were they the state police officers going back to their own jurisdictions?

Mr Kitson—Some were. A relatively small proportion of those were state jurisdiction staff. Some were invited to return slightly earlier than their projected secondment period to us. Some went at the end of the natural period. But the majority of them were, as I said, contracted ICT staff.

Mr WOOD—But a number too were working on ongoing investigations. Would that be correct?

Mr Kitson—There were some, yes.

Mr WOOD—What happens to those investigations? You have obviously now got less manpower or the investigation goes on hold—

Mr Outram—Before we released anybody we did a thorough evaluation of each investigation—what stage it was at, what the critical tasks were that remained to be done, who was going to do those tasks. A couple of the investigations have had to be re-phased so we have had to allow more time to undertake some of the tasks. So they are going to take longer. In some cases we have had to actually put some of the activities back by quite some time. But also we have been to the board and we have downsized our menu of work so we are not taking on as

much work as we were previously. When we finish an investigation we are not automatically renewing with a new investigation.

Mr WOOD—I am hearing concerns privately about the concerns of the ACC when you have investigations ongoing with teams established and the next minute members are required to leave that team for budget cuts. How devastating for morale is that for the team environment?

Mr Kitson—It is inevitable that when people see their colleagues go, and particularly if they have to pick up some of their work that their departed colleagues might otherwise have done, it increases the pressure on the remaining staff members, and I do not doubt that that would have an adverse impact on morale, but the ACC has a tremendously committed workforce, and it is not a workforce that we would seek to abuse by simply saying, 'Well, you just have to pick up the slack.' As Mr Outram just noted, we have realigned our work, we have cut back where we can and we have reduced the work take-on issues. I think it is fair to say that the vast majority of ACC staff have remained incredibly committed through what has been a difficult period for the agency for reasons that, as this committee is aware, are not entirely associated with the budget.

Mr WOOD—I suppose that the point I am making is that we are hearing that we have $10 billion which serious and organised crime is reaping from the Australian community each year and that your budget in 2008-09 is $96 million, an actual cut of $2.7 million. Obviously this cannot be good when it comes to fighting serious and organised crime. I personally find it devastating to know that, when we should actually be putting more funding into fighting serious and organised crime simply because of the figures you are talking about, there are members being sent back to the state jurisdictions and investigations not necessarily being put on hold but, I think you said, some going on the backburner and others not being picked up. What are your comments on that?

Mr Kitson—We have to adjust the menu of work according to the budget that is available, and we have done that. We are continuing to focus on the most serious forms of organised crime. We have a range of other tasks before us, and we will continue to deliver those according to the budget that is available. Like all agencies, we would do more with more budget, but our job is to work within the budget that is given to us.

Mr WOOD—Moving on to what is happening around the world and looking at the US, Canada and the UK—which I see discussed in your submission—what type of legislative arrangements do they have in fighting serious and organised crime? I heard you talk about Ireland before. Are there others, like the RICO laws, which you would be recommending to this committee? At the end of the day the committee has to put recommendations in its report, so are there things we should be looking at overseas?

Mr Kitson—Yes, I think that it would be useful for the committee to benchmark against overseas practice. Our experience from having gone through a similar exercise is that there are not ready or easy parallels with the Australian environment, partly because the nature of the criminal economy in each of the other international domains is different. They have different sorts of land border arrangements that affect the way in which crime operates there, particularly in the European experience, and they have different sorts of people movements—again, in the European experience. We would continue to point to the UK's legislation as having the greatest potential applicability here, not necessarily because we see that the crime environment is

particularly similar—there are, I think, a number of similarities, but I do not think that means that it is necessarily an identical environment—but because of the way in which they have approached the same challenge that we are now facing about targeting the highest end of organised crime, the high-risk money flows. Their solutions to that seem to us to have some applicability here.

Mr WOOD—What about the RICO laws? Have you looked at those?

Mr Kitson—We have.

Mr WOOD—Can you explain how they work and, in your opinion, the advantages or disadvantages? Does that put you on the spot?

Mr Manning—I am not sure that I could give you a full and complete explanation of that off the top of my head.

Mr Brady—While Mr Manning is gathering his thoughts, one of the difficulties with that type of legislation is that it revolves around the definition of an organisation. Given that we predominantly see an entrepreneurial environment for serious and organised crime, a lot of your attention is focused on defining something which may not exist. It also gives an opportunity for or reinforces that entrepreneurial coming and going.

It is fair to say that the deployment against, say, the Griffith type groups in the past was more of a set piece deployment against a defined organisation, and maybe some of that has given rise to the sort of entrepreneurial activities that we now have. That is one of the major drawbacks of the RICO legislation. I know that a number of jurisdictions in Australia have looked at it over time and I think New Zealand has looked at it as well.

Mr WOOD—In your submission, when talking about OMCGs, you say:

> They present a significant threat to law and order at a jurisdictional level and have national and international links that will ensure that they feature in any list of high risk crime groups for the foreseeable future.

From reading that it is obvious that you are greatly concerned about OMCGs and their involvement in serious and organised crime.

Mr Kitson—Yes. OMCGs continue to feature in the Australian criminal landscape; of that there is no question. We would make a distinction between the operation of those groups as networked entities and the criminal enterprises of a number of the significant individuals within those groups. There is no doubt that in some instances those individuals operate entirely as individuals. There are instances where some of them operate as individuals carrying perhaps the threat of menace that goes with the OMCGs and there are instances where certain chapters, and perhaps the whole club, have a network of criminal activity which ranges from intimidation, extortion and violence through to involvement in the manufacture and distribution of some illicit drugs. I think it is difficult to characterise them as belonging to any particular sector. It is true to say that in any analysis of some of the nationally significant crime figures you will find people who have associations with outlaw motorcycle gangs, but I do not know that that would

necessarily mean that you would characterise the outlaw motorcycle gangs themselves as being the primary criminal threat in this country.

Mr WOOD—We had evidence from Superintendent Hollowood in Victoria and, when asked about OMCGs, he said they do not appear to be high on the radar compared to other serious crime groups. Why are we hearing evidence from you that is different to what we heard in Victoria? Is Victoria not a problem, because that is what they are saying down there?

Mr Outram—I think all groups are different; that is what we are seeing. There are some outlaw motorcycle groups who probably do not present anywhere near as high a threat as others. There may be a regional dimension to that. Some groups behave in a more traditional OMCG way. Their behaviours are more traditional. Among others we are seeing more recently, some groups are demonstrating quite sophisticated corporate type criminal behaviours, and there are individuals within some groups who represent individually a significant threat. They are generating significant wealth, primarily through drug manufacture and distribution, as Kevin said. They have networks with other criminal groups outside the OMCG sphere, so I can understand it is really very difficult to look at OMCGs as some sort of homogenous threat. Each group will have individuals who represent different levels of criminality and threat, and they have to be looked at separately, in my view, to establish what the actual threat is within the group. It may come down to one individual.

Of course, what the OMCGs do is give those individuals a ring of protection, if you like, and a presence that probably suits their criminal enterprise in terms of intimidation, fear and those sorts of things, and maybe access to violence and arms. Some jurisdictions, I think, would see the OMCG threat as being important because it is important to the community—it is a very visible criminal group—whereas, as Mr Kitson said earlier, some groups are not so visible, and that is maybe why some jurisdictions are focused more on them than on others. Within each jurisdiction, though, I would respect the jurisdiction's view of which groups represent the highest level of threat in terms of organised crime.

Mr WOOD—Thank you.

Senator POLLEY—Apart from the fact that we are always chasing our tails as far as criminals are concerned, I will take up the deputy chair's position about putting more money into an agency such as yours and say the question of whether we are going to reap any more rewards financially is still a question that no one can answer.

Just in relation to following up on the outlaw motorcycle gangs, it has been confusing to go to various states and hear evidence about, say, 18 gangs that they know of but only three of them have links to organised crime. In relation to what has happened in South Australia in the legislation they have brought in, can you give us an overview of the ACC's position on that legislation? Once again, no-one wants to be critical and no-one wants to prejudge the outcomes of that legislation, so can you give us an overview from your perspective?

Mr Kitson—I fear I may disappoint you here because I am going to join the chorus of voices who do not want to offer critical comment or to call too early the success or otherwise of the legislation. As you are aware, it is a very recently applied piece of legislation. It seems to us that the South Australian legislation is very much a matter for the local jurisdiction. It is perhaps easy

to see the rationale for their development of that piece of legislation and their intent to apply it. Our perspective nationally is that it would be tremendously hard to replicate that across the national environment and that to have Commonwealth legislation of similar impact would be unwieldy and perhaps difficult to maintain. As we said earlier, the majority of our targets do not readily self-identify as being organisations and I think one of the risks that we see in any move to proscription of any sort is that you simply change the nature of the target and perhaps arguably make it more difficult for you to identify the targets that you are most interested in.

We are interested to see how the South Australian experience develops. We are particularly interested to see what impact it might have in neighbouring jurisdictions. I think others have given evidence before this committee about concerns about a displacement effect across state borders into, say, Victoria, Western Australia and perhaps into the Northern Territory.

Senator PARRY—And Tasmania.

Mr Kitson—And Tasmania. But if we see any of our crime group targets, OMCGs or otherwise, as being confined to a particular jurisdiction then I think we are missing the point. These people are highly mobile and not in this case simply because they have access to motorbikes but simply because they recognise no borders. I think anything that confines their activities in one particular sphere, whether that is geographical sphere or a regulatory sphere, will cause them to shift the focus of their activities. The dollar profit is such an attractive lure for them that they will simply reinvent and find a different pathway to achieving the dollar at the end of the day. We know that New South Wales has some legislation which has, I suppose, elements of the South Australian legislation. I think New South Wales probably argues it has one of the stronger anti-gang or anti-group type structures. I think there is some effectiveness in their approach as well as in the South Australian approach.

Senator POLLEY—I think you covered a couple of questions I was going to ask there. From the public's point of view, for them to have confidence that organised crime is actually being attacked and that they can have confidence in where their taxes are going, don't there need to be more uniform laws across the Commonwealth?

Mr Kitson—I pointed earlier on to the potential benefits of harmonised legislation. It would undoubtedly bring some benefits, but I suppose that is a matter for the parliament to contemplate.

Senator PARRY—Parliaments in general.

Mr Kitson—Parliaments, indeed. If you were to take a highly theoretical view, yes, standard legislation across the country would make our lives a good deal easier rather than having to interpret state legislation to look at the complementary legislation the ACC has in the states and territories. It would make a number of investigations and potentially some of the prosecution processes a good deal more straightforward.

Senator POLLEY—On internet fraud and also pornography and those sorts of things, what sort of resources does ACC put into that part of organised crime?

Mr Kitson—We do not specifically target internet fraud or pornography, except where it is an element of focus on other activities. Fraud forms part of our financial crimes special investigation and we can attack or investigate or inquire upon any of those areas where we might see internet fraud being committed. But, broadly speaking, the high tech crime area—if I can characterise it thus—is the responsibility of the Australian Federal Police, and we will work with them as appropriate. But if we were to observe or identify a particular instance of internet fraud taking place the likelihood is that we would refer it to either the jurisdiction in which it was taking place or to the Australian Federal Police. In pornography our major interest there has been in the context of the National Indigenous Violence and Child Abuse Intelligence Task Force.

Senator POLLEY—Moving on to the Australian Criminal Intelligence Database, can you give us an overview of how that works and what access states and territories have to the database.

Mr Kitson—ACID sits as the sole national criminal intelligence repository. It is important to make the distinction between criminal intelligence and criminal records. The criminal records information is held elsewhere—with CrimTrac and others. It is perhaps best described as a place where law enforcement agencies and a relatively select number of other agencies can go to search nationally held information about a particular crime type. Some jurisdictions use ACID as their sole intelligence database, so it will include all of their intelligence from street-level crimes to relatively—if I can take the risk of describing it thus—insignificant crimes compared with, say, nationally significant crimes. But it also contains information about things like clandestine laboratories, and we will include information about some of the major crime figures.

We encourage access to ACID by all law enforcement police officers and non-police officers where they are involved in, say, intelligence activities. A good deal of the law enforcement intelligence work around the country is conducted by non-sworn officers, so we do not restrict access to sworn officers. There are vetting procedures that apply to access to ACID and we have a range of audit systems that allow us to make sure that information is being accessed and used appropriately.

We have invested heavily in the last few years and particularly used a good deal of government funding to enhance ACID to make it 'the' national repository for law enforcement intelligence information. The tracking of figures over the last two years in particular shows a significant success in making it precisely that.

Senator POLLEY—When we were in Tasmania, the state that has less organised crime than any other, we found that they also use the resources of the Victorian Police Force. At a time when money is in short supply—you have had to take the same dividend cut as every other Commonwealth department—is there scope for the Australian law enforcement agencies across the board to better utilise the resources they have and to perhaps have more specialised units, rather than all police forces in all jurisdictions try to cover everything and use the same amount of resources?

Mr Kitson—If we take the specific area of ICT, yes, I think there are some compelling arguments for greater collaboration, particularly when we are all investing in major new systems as well, which we all inevitably need to do to keep pace with technology and with the demands of acquiring, holding, using and appropriately managing increased volumes of datasets. The

ACC has worked with some of its Commonwealth partners to examine systems that might apply across Commonwealth law enforcement agencies. We have talked to Customs and to the AFP about investing jointly in new systems.

In terms of national approaches, we have used a lot of the funding that we had arising out of the review of aviation security and policing, otherwise known as the Wheeler review, to help jurisdictions to contribute to ACID to improve connectivity so that we would overcome some of the obstacles of incompatibility of technology and language used in the databases so that there is a seamless transition between the databases. As long as we have our current system of government, one of the most efficient ways of doing things is to make the existing systems talk to each other more effectively. The scale of enterprise that would be required to dispense with the existing systems and replace them with a whole national framework would be beyond measure, I think.

Senator POLLEY—In regard to uniform laws, you have looked at the US, which has quite a history of experience in organised crime. They must still face the same sort of challenges with their states' legislation, because it appears to differ in every state I have looked at recently. So surely there have got to be some lessons we can learn from the US and even from countries throughout Europe.

Mr Kitson—I would like to argue that we are perhaps considerably better placed than our American colleagues in that we do not have the vastly fractured law enforcement system that they have. They face a very much greater number of complementary and competing law enforcement agencies. Some of the questions that we touched on earlier about RICO legislation and the difficulty in identifying, characterising and describing an organisation are evident in the American experience. It is, I think, partly what has caused law enforcement here to step away from what is a tempting idea in principle to concluding that in practice it would be immensely difficult to apply.

In the context of the way we operate, we do constantly look at how others are doing the business. This morning we have characterised organised crime as being complex, sophisticated and ever changing and we have described our own responses as evolving and maturing, but part of that process is recognising that we really do not have all of the answers here. We looked quite extensively at the American systems. A couple of our senior officers spent a good deal of time in the States, in Canada and in Europe last year looking at Europol systems and at different intelligence agencies, including those that trespass into the national security space, and we have taken some of the lessons out of that and are currently applying them across our own systems and our own approaches.

In terms of the legislation, it is part of what informs us in our view that we do not seek major change here but perhaps a refreshed and more robust commitment to the existing powers that we have available to use. We sit before the committee as an agency that holds considerable coercive powers and we believe that when they are appropriately used they can deal with many of the issues that might otherwise require separate legislation.

Ms LEY—I have just one question as we are close to the end of our session. You mentioned your broad support for the UK legislation. Following on from Mr Wood's questions, how would you see a Serious Crime Prevention Order operating with organised crime in the Australian

community? Can you paint a picture of what effect it would have on the group? Also, how would it be seen by the public?

Mr Outram—I will answer it at an operational level while Michael gets to the more legal area. We talked earlier on about the complexity of the business structures and we are yet to see the success or otherwise of the UK legislation. But as I understand it, it works through the civil court process. It seeks to identify elements of the business structures of the organised criminal group and to put a specific intervention in place. The examples that were given to me included a rogue firearms dealer who was diverting firearms off the side back into the community. They can prevent that person from doing business with specific people or from attending at specific places to do business and so forth. If you were to apply that in the context of, for example—and this is hypothetical I might add—a rogue accountant, in theory you could try to put an intervention in between the criminal enterprise and that rogue accountant to force the criminal enterprise to shop elsewhere.

What we were attracted to was the philosophy that it is based on the level of risk to the community, that it is about preventing crime rather than anything else and that it is based on the civil standard, but that obviously requires a lot of thought about the kind of information you put before the court. So there are practical issues that would have to be thought through. But ultimately it is about prevention and it is about getting into those business structures and that is why philosophically we were attracted to it. I might ask Michael to comment more on the legal aspects.

Mr Manning—I would add there that, as is evident from the examples that Mr Outram has given, it is essentially a system directed at isolating individuals from the criminal environment so that it does not attack the group, as a group, but it attacks notable points in criminal activity. I think that is consistent with the sort of philosophy we have been talking about here this morning in terms of identifying key targets—that it identifies the key figures, key facilitators and so forth and seeks to fashion directions in a fairly free way to identify the things we need the individual not to do in order to make them cease to be an effective part of the criminal environment—and directing an order to those particular activities.

Ms LEY—So its premise would be the restriction not of movement of the individual but of certain transactions or liaisons that they might make and its burden of proof would be civil rather than criminal. It sounds enormously difficult to get across the line of public approval. Can you give any other examples of how it might work here?

Mr Outram—I think the firearms market was a good example because obviously the link to community harm is far more visible there. That is why, as Mr Kitson said earlier, whilst we are interested in this legislation philosophically, I think it is too early to see how successful it is going to be, even in the UK context, and we will be watching over the next one or two years as cases progress through the courts. In terms of the community perception of it, I think it all depends on the trigger point—what the information is. If it is a post-conviction process—somebody is convicted for a specific offence and then it triggers this sort of mechanism—that might be more palatable; I do not know. We recognise that there are some inherent difficulties and it does not automatically transfer into our context but, as I said, philosophically, because it attacks the business structures, we think that the idea has some utility and warrants some possible further investigation.

Ms LEY—When do you think we will have enough information from the UK to give us some idea of its effectiveness?

Mr Kitson—I imagine we would want to see a good couple of years worth of operation. It may well be that we would still be largely relying on a small number of case studies, even at that point. I suspect, in reality, this is a much longer process for them to be able to come to a judgement for themselves about its value in their context.

Ms LEY—Would it have to be state based or federal based legislation? Could it be federal here?

Mr Kitson—My sense is that it would be enormously difficult to administer at a federal level.

Ms LEY—So it would most likely be stated based?

Mr Kitson—I would think so.

CHAIR—There being no further questions, I would like to thank you, Mr Kitson, and your officers for coming along today. We will see you on Monday.

Mr Kitson—Indeed. Thank you.

[9.59 am]

MORRIS, Assistant Commissioner Tim, National Manager, Border and International, Australian Federal Police

NEWTON, Assistant Commissioner Mandy, National Manager, Economic and Special Operations, Australian Federal Police

CHAIR—I welcome representatives from the Australian Federal Police, Ms Mandy Newton and Mr Tim Morris. I understand you are going to make a brief opening statement and we will then go in camera.

Assistant Commissioner Morris—Firstly, I would like to apologise on behalf of Commissioner Keelty, who is unable to appear today. Ms Mandy Newton and I, as you have heard, are in charge of the Border and International, and Economic and Special Operations portfolios. We welcome the opportunity to appear before the committee and express strong support for the continued monitoring, assessment and development of law enforcement models to ensure that the issue of serious and organised crime is being targeted in the most effective manner and with the most appropriate tools. The criminal environment in Australia is robust and dynamic and we cannot afford to be complacent. We would also like to note that the AFP contributed to the written submission by the Attorney-General's Department to this inquiry and this submission reflects the primary role of the department in relation to the Commonwealth's legislation framework.

I will briefly introduce the role of the AFP in the context of this inquiry. The AFP's responsibilities are legislated under the AFP Act and further detailed in directions issued by the Minister for Home Affairs under the provisions of the act. Under this framework the AFP focuses on transnational crime; international policing; capability building; large-scale fraud and money laundering; key infrastructure, including airports; protection policing and counterterrorism. The AFP has a clear ministerial direction priority to prevent, deter, disrupt and investigate serious and organised crime as well as broader responsibilities relating to community policing, national and international law enforcement, and overseas peacekeeping. The AFP actively monitors its operational and strategic developments in all these areas through dedicated intelligence assessments and more forward-looking environmental scanning.

Organised crime groups continue to be largely motivated by financial gain and exploit vulnerabilities in areas ranging from drug trafficking, to exploiting false and stolen identities and personal information, to large-scale and sophisticated tax fraud and abuse of the complex financial systems. The AFP is focused on targeting the financial basis of criminality. Recent and current enhancements to the proceeds of crime legislation and related legislation provide a robust foundation for this work. The other major crime type that is impacting on Australian society is the increased prominence of terrorism—a criminal activity with very different motivations.

Australia's criminal environment is dynamic. Criminal groups have proven they are able to adapt to the challenges and adopt new operating models as society develops and law

enforcement impacts on criminal behaviour. The AFP's scanning work suggests that organised crime groups will continue to exploit society's increasing uptake of technology and the opportunities it provides to make their operations more efficient and secure as well as for the abuse of victims. Technology will continue to enable criminals to conduct existing crimes such as child abuse, pornography and identification crimes in new ways whilst creating new crimes such as hacking.

Preventing crime offshore, before it has an opportunity to harm Australian society, will remain a major focus of the Australian Federal Police. It is also important to note that significant policing efforts in the international deployment group and airport uniform policing also play a role. Robust governance and law enforcement systems in both these initiatives introduced into the region will reduce organised crime opportunities to exploit offshore locations and major transport hubs.

The AFP currently has a broad range of investigative tools available for the investigation of Commonwealth criminal offences. The seriousness of the offence is often a trigger for the use of more intrusive tools. The AFP is able to utilise search warrants, telecommunication interceptions, surveillance devices, controlled operations and assumed identities to investigate serious and organised crime. Further, the AFP has a witness protection program and is able to pursue the proceeds of crime to assist in dismantling and deterring criminal groups and syndicates. Specific tools are being progressed through government policy processes to the satisfaction of the AFP.

The AFP can also access the ACC's coercive powers and has recently dedicated more resources to improving the identification of potential opportunities for this to occur. The submission from the Attorney-General's Department noted that legislation specifically targeting serious and organised crime groups is only one of the possible approaches to combating such groups. Intelligence, investigative and operational capabilities, and collaboration both nationally and internationally remain vital to addressing criminal networks.

One area that presents particular legislative, technological and cultural challenges is that of sharing information. It is important that developments or new approaches in this area address the operational complexities of these issues, including critical differences between criminal histories, law enforcement intelligence and national security intelligence. The AFP has been actively assessing the implications of technology on AFP activities and its operating environment. This has involved a comprehensive working group study on technology enabled crime. In response, the AFP has created a specific AFP portfolio to address this issue. It is important that further advances in technology that impact on crime, and our responses that require legislative reform, be dealt with as expeditiously as possible. The lag time between the identification of operational issues and the finalisation of legislative issues continues to remain challenging.

As the committee would appreciate, there are many difficulties in measuring exactly what impact any agency, including the AFP, can make on the criminal environment. A range of qualitative performance indicators can be drawn upon, such as arrests, convictions, seizures and crime rates et cetera, to prove and increase the results and consequent successes or failures. The AFP has worked hard to develop clear reporting models, such as the drug harm index, which generally takes analysis of trends over some period of time to provide any real clarity on the

efficiency of given approaches. The development of performance measure frameworks that do this are clearly illustrative of the benefits of investment in this area and will be pursued. The AFP can refer to very clear case studies of recent operational successes under Operation Wickenby, which targeted high-level tax fraud and money laundering, prevented large and increasingly significant amounts of illicit drugs from reaching our shores and streets and dismantled one of the most insidious networks creating and distributing child pornography.

Some commentators may contend that new legislation and powers targeting terrorist activity and additional police resourcing are inconsistent with the likelihood of any direct attack on Australia. However, it is important to note the massive potential impact on Australia social, political and economic systems such an attack may result in. It does not need to be stressed that access to intrusive powers must balance the benefit of potential prosecution or deterrents effect with the resources required for adherence to extremely rigorous accountability and prosecution processes—an intense scrutiny leading sometimes to criticisms, distractions and diversion of critical resources. The AFP will continue to support a firm legislative approach where necessary that enables a flexible but transparent and accountable law enforcement model. The deterrent value or sense of security in society is an approach which serves as a clear disincentive to criminals or potential criminals and cannot always be well measured or reflected in reporting.

In conclusion, the AFP will continue to monitor and analyse national and international developments and new approaches to serious and organised crime, both of the legislative and wider nature, and pursue and implement those strategies where there is clear evidence that they will work. The AFP has been a major supporter of the work undertaken by Dr Schloenhardt in analysing legislative models and their impact on serious and organised crime. It is extremely important to recognise that law enforcement powers are only one aspect of approaching the crime problem, and addressing overall harm requires a more holistic approach. Any new legislative approaches would need to recognise what is and what is not working well now, including a possible deterrent value, and be balanced with the realities of actually achieving prosecutions, which are considered by many as a key indicator of law enforcement performance. For some time the AFP has held the motto ‘To fight crime together and win.’ The AFP will continue to actively engage with partners to ensure a comprehensive approach to preventing and investigating criminal activity and protecting Australians.

CHAIR—Thank you.

Evidence was then taken in camera—

Proceedings suspended from 10.09 am to 10.50 am

Mr HAYES—Earlier we were talking about proceeds of crime legislation and how it applies throughout the Commonwealth. Having regard to the fact that even using proceeds of crime legislation is effectively attacking the business model of crime—reducing the profit et cetera—I am particularly interested in how important it would be for us as a nation to have consistent legislation dealing with unexplained wealth. Would that be a significant net addition to the tools for fighting serious and organised crime in this country?

Assistant Commissioner Newton—Can I say that the AFP would always support consistent legislative arrangements across the country with regard to most crime types because it gives the

ability for all jurisdictions to operate complementary arrangements around any type of investigation being undertaken. I think what we do is learn by whose provisions are the most suitable and achieve the best outcome. Over recent years police jurisdictions and ministers have worked very closely together to get that consistency in delivery of legislation.

Mr HAYES—They have not done so well of late. I would imagine that in a number of your joint investigations with state and territory police jurisdictions there would be a call made about what you rely upon. For instance, if you are involved in a joint jurisdictional investigation with either Western Australia or the Northern Territory, I imagine you would use the unexplained wealth legislation as it applies in that state or territory.

Assistant Commissioner Newton—Certainly we use the most applicable legislation to the type of crime that has occurred. In determining the prosecution process and whether or not it is a Commonwealth or state prosecution, the AFP and state jurisdictions are very cognisant of the necessity to look at all legislation and the most appropriate legislation to make charges with. What you may tend to find in our aviation responsibilities, whereby every day we are applying both Commonwealth legislation and state jurisdictional legislation, is that we will have charges that we put forward before the court that are of both a Commonwealth and state nature because there might be five or six different types of offences that have been committed that fall under both legislative requirements.

Mr HAYES—In the opening statement, Assistant Commissioner Morris commented on the fact that one of the things that the AFP are consistently doing is reviewing the effectiveness of legislation as it applies throughout the Commonwealth, whether it be Commonwealth or state or territory based legislation, in assisting to combat serious and organised crime. I am not aware of any particular recommendations that have been made by the AFP in respect of that. Maybe this committee would not be privy to that. What vehicles does the AFP use to recommend changes that would bring about model legislation in those areas?

Assistant Commissioner Morris—Essentially, we go through the Commonwealth Attorney-General's Department as our primary interlocutor in terms of making recommendations for legislative reform. We are at an interesting time right now in that there are series, both overseas and domestically, of novel or innovative pieces of legislation which offer new approaches to serious and organised crime. We are watching those very closely to see if there is a wider applicability. But our judgement is that for many of them—the legislation in South Australia and the Serious Organised Crime Agency legislation in the UK—it is a little bit too early to make a decision on whether they are effective or not. You would really need two or three years—

CHAIR—Is the UK one the one you are specifically referring to?

Assistant Commissioner Morris—That is right.

CHAIR—Are there any others?

Assistant Commissioner Morris—South Australia has legislation, as well. It has not actually been utilised yet. I think they have had it for three or four months but they have not yet used that legislation.

Mr HAYES—Can I just pause you there. You said that information is fed through the AG's department.

Assistant Commissioner Morris—That is right.

Mr HAYES—If we wanted to seek your specific recommendations as the Australian Federal Police, being a premier law enforcement agency, about what would be the most contemporary tools necessary to fight serious and organised crime, I do not think we would necessarily want that filtered through other agencies or, with due respect, through the AG's either. I think we would want to hear from our top cops in that respect.

Assistant Commissioner Morris—I could think immediately of two things—that is, firstly, to provide anything that would assist in harmonising the transfer of information across jurisdictions in Australia; secondly, to revisit, seriously, the unexplained wealth provisions that were originally looked at, I think, in the Sherman report in 2006. I am not sure whether the government has responded to the Sherman report. I think it is up to a place in the process whether the government is yet to make a response.

Mr HAYES—I know the police have not made a specific comment on the Sherman report, put it that way.

Assistant Commissioner Morris—We would be keen to revisit the provisions about unexplained wealth—not dissimilar to Western Australia and New South Wales—and perhaps see their applicability in the Commonwealth arena.

Mr HAYES—I am not going to seek to embarrass anyone in terms of the legislation in South Australia—that is a separate jurisdiction—although I get a bit tired of the 'let's suck it and see' routine we get from everyone who comes before us in terms of law enforcement. I have a general feel for the fact that we cannot get our top law enforcement agencies all around the table—as we do, by the way when they sit on the ACC—and get a real view as to what are the best and most contemporary tools necessary for fighting serious and organised crime. It does annoy me when individual jurisdictions think, 'We'll just take one of these things out and everyone else will simply wait and see what happens with that.' Surely that approach is simply creating legislative gaps in our armoury for fighting serious and organised crime. I am not saying anything derogatory about the legislation, but the one-out aspects of it.

Assistant Commissioner Newton—We tend to find quite often, working at the Commonwealth level, that a lot of the tools that we require, and the methodologies utilised by criminal networks, sit in the international arena, and the Commonwealth government agencies regularly discuss issues associated with how we can close the gaps. We do that in conjunction with state and territory police jurisdictions, but sometimes in dealing with what comes up in front of your face—perhaps outlaw motorcycle gangs and community concern with regard to groups like that—you find that the tools that are required are a little bit different. The technology associated with our high tech crime operations cannot necessarily be sustained in smaller jurisdictions. So the AFP are very keen to continue working on ensuring that our legislative tools are effective in fighting the criminal activities and the methodologies as they change and shift—because once we have a capability they find out we have the capability and they come up with a new methodology. What we see in terms of dealing with legislation specific to organised crime

groups is that those crime groups shift and change on a regular basis based on the community or the demand at the time. So it will ebb and flow, create and recreate itself, according to the particular jobs that we might be dealing with. So demand is slightly different and that might be why you see some differences of view from time to time about the priorities.

Mr HAYES—Having regard to our terms of reference in respect of serious and organised crime, would it be right to say that we should be cognisant as to legislation that not only is being proposed in this country but is being applied elsewhere, particularly in the UK in SOCA, to a lesser extent in Canada with its RICO legislation and in the tax regime in Ireland, for instance?

Assistant Commissioner Newton—What I could say is that we have a person placed at SOCA and a member of SOCA placed in the Australian Federal Police as well. We work very closely together and have joint groups that come together on a regular basis across the world to discuss new technologies, new crimes and internet related or non-financial-transaction types of crimes and how we counter those, including legislation across countries, and we monitor each other's successes in those areas. Mr Morris might want to comment in terms of our international liaison officer network that is linked into that.

Assistant Commissioner Morris—That is exactly right. Besides predominately working on operational matters, part of their brief is the strategic engagement with like-minded agencies. That does include monitoring legislation and novel approaches to serious and organised crime. I understand the committee has received information on the British approach. It is quite innovative and quite novel, but from where we sit the jury is still out on whether this will actually work. As I alluded to previously, in a lot of our crime key players are based offshore. They will never come near Australia. So some of those models really would have limited applicability in the Australian context. That is why we look at them closely. If we can pick out the good bits that we think might have some sort of applicability and relevance to Australia, we will be the first to do it, but they are complex pieces of legislation. I sometimes wonder how much extra resource would need to go in to monitoring some of these pieces of legislation. We have a finite resource in the Australian Federal Police and in most law enforcement agencies. There would have to be a very careful calibration between the expected benefit and the resource that you would put into the back end to get the benefit.

CHAIR—We have come to 11 o'clock, but a number of committee members have questions, some that we need to have on the record. Senator Parry.

Senator PARRY—Assistant Commissioner Morris, that was a nice segue into my question. Assistant Commissioner Newton, without mentioning specifics and numbers, during the in camera session we discussed the New South Wales Crime Commission and their return with proceeds of crime and the Commonwealth return on proceeds of crime. Would you elaborate on the reasons why the dollar value appears lower with the Commonwealth than it does with a smaller entity like the New South Wales Crime Commission.

Assistant Commissioner Newton—With regard to one particular Wickenby investigation, it was determined that the New South Wales Crime Commission was the most appropriate group in the investigation to restrain money, so $47.286 million was restrained by the New South Wales Crime Commission. For the Australian Federal Police, our results were in excess of $2.4 million in proceeds of crime being forfeited for the 2008 period and $11.3 million in taxation assessment

of the penalties. I think the overriding issue here is that agencies work together to identify the best way to either restrain assets or use the taxation system as the predominant, most effective way of addressing tax related fraud.

Senator PARRY—Thank you. Would you like to comment on the legislative provisions of the New South Wales Crime Commission legislation in the sense that that is broader and enables a greater collection, if you like, of proceeds of crime.

Assistant Commissioner Newton—Can I say that the legislation that the New South Wales Crime Commission utilises is a little more flexible in being able to restrain assets than what we currently have to be utilised by the Australia Federal Police. The Australian Federal Police have brought that to the attention of the Attorney-General's Department in terms of what we would like to move forward with in the future through amendments to legislation.

Senator PARRY—A final question: does the AFP or the Commonwealth get any direct benefit from a share in any of the $47-odd million that you mentioned?

Assistant Commissioner Newton—It has been acknowledged that there will be a share that should go to the Commonwealth. It is yet to be finalised—

Senator PARRY—It is not a one for me, one for you sort of thing, is it?

Assistant Commissioner Newton—It just depends on the circumstances of a particular job and who has a predominant investigative role in that job. In this instance it is quite clear that, firstly, the finalisation of the court proceedings have to be completed and, secondly, a determination as to how best that is split between agencies or jurisdictions.

Senator POLLEY—In relation to the outlawed motorcycle gangs—you may have been in the room earlier—we have had varying degrees of evidence in relation to their involvement in organised crime. I was wondering if you could give your view in relation to outlawed motorcycle gangs in this country, and to what extent do they pose a threat through organised crime?

Assistant Commissioner Morris—From the Australian Federal Police perspective their activities to date have predominantly come into light more in the state jurisdictions in terms of drug manufacturing, supply and trafficking, which are all state offences, whether it is intimidation, murder and so on. We have participated in outlawed motorcycle gang task forces and contributed to the intelligence collection plans in that regard.

The major shift that we have seen is that as domestic legislation to block the supply of pseudoephedrine—the main chemical precursor to the clandestine laboratory industry—has become effective we have seen groups involved in that manufacture look offshore to import chemical precursors such as pseudoephedrine. From that we have seen elements of outlawed motorcycle gangs travelling overseas to make those connections or a second group of narcotic entrepreneurs who have seen that there is a need and then go and source these drugs. They are available in any country with a pharmaceutical industry and are quite easy to obtain. They then fill a market need in terms of importing chemical precursors into Australia on behalf of the groups that are involved in these clandestine laboratories.

We have also started to see a very small element of the outlawed motorcycle gangs becoming corporatised and using more sophisticated business structures in their transactions. That is an area where we are moving forward with the ACC and our state counterparts. In the main, it has traditionally been within the state law enforcement jurisdictions and coordinated by the ACC, but we are starting to see a subtle but significant shift into the jurisdiction of the Commonwealth.

Senator POLLEY—In your evidence you suggested that a serious threat comes from international syndicates in relation to organised crime here. But there is organised crime that operates solely within the Commonwealth of Australia. Can you give us an overview as to the sort of crime that is involved there?

Assistant Commissioner Morris—Certainly. Obviously we are interested in the ones that fall within the Commonwealth jurisdiction primarily, but it is not always clear-cut. Traditionally in Australia a lot of organised crime was based on ethnic lines. Particular groups would stay largely within those ethnic groups to conduct their crime, whether it was with an international flavour or with a domestic flavour.

The interesting trend that we are seeing now is that that is breaking down and breaking down rather quickly. The groups are more business driven and will enter into quick and ready partnerships with whoever may be able to do the type of crime business that they need to do. So the traditional models—and we have seen it in the past in documents categorising crime groups along strict ethnic lines—are becoming less and less relevant and are becoming more and more flexible. People are shifting around very, very quickly and flexibly into the most profitable crime types they can find.

Senator POLLEY—So, in relation to the number of targets and operations that can be run, , from the criminal's point of view in our country, realistically, it is like spinning the roulette wheel; the chances of being caught are diminished because of lack of resources, sophistication and equipment. Would that be correct?

Assistant Commissioner Morris—We are identifying and catching people. I think the two challenges are these: one is that coordination across the federation will always remain a challenge that we have to keep working on, and the second is that the profits are so huge and so lucrative that people will take the risk continually. They are too big to ignore, so we are always going to have players willing to inject themselves into the market no matter what the risk. So I think the ultimate, if you like, endgame for us is to make the Australian market one of the more risky in the world to deal in, so that people will perhaps look at other markets than Australia—this is from an international perspective—to do their business and make their money in.

Senator POLLEY—This is my final question; I am very conscious of the time. I would have to say that it does not matter which level of law enforcement in this country comes before this committee. They all say the same, and you have just said the same thing: there is a challenge in having uniform legislation across this country. I say that to me that is an unacceptable situation considering that the population of the country and the number of states and territories involved is very small if you look at the comparison with Europe or the US. Surely there has to be within this country the will at the senior level to ensure that it happens. It is not just about passing legislation through parliaments; it is also the law enforcement agencies themselves. Have you got a response?

Assistant Commissioner Morris—That is quite right. It is both. It is having the legislation to work with on that common basis, and then it is the responsibility of the operating agencies to make the relevant provisions to then work to that legislation—to exchange the intelligence, to be flexible and to be proactive, not reactive. Absolutely.

Mr WOOD—What budget cuts has the AFP incurred, and how has that affected tackling serious and organised crime?

Assistant Commissioner Newton—In terms of the efficiency dividends that the AFP, like all other government agencies, has had to deal with we are in a position no different from that of any other government agency across the Commonwealth. In terms of our funding arrangements, we have had new policy proposals that have been funded, which allows the AFP to undertake work that is very specific to those funding arrangements that we have, such as Project Wickenby. The AFP, of course, is receiving 500 additional police over a period of five years. The intention with those police is to fall back into what has been classed as our core traditional business in areas like fraud and economic crime as well as drug investigations and also the impacts of counterterrorism. So the AFP has to continually pay the costs associated with our staff cost increases, as well as CPI increases, so it is a constant balance for the organisation moving forward in how we best utilise the resources that we have, acknowledging that a large component of the Australian Federal Police's funding is specific to national policy proposals and funding arrangements that we cannot shift to other capabilities that we perform.

Mr WOOD—What was the efficiency cut? Was it three per cent?

Assistant Commissioner Newton—An additional two per cent, plus 1.25 per cent, which is the normal efficiency dividend.

Mr WOOD—Did that have an effect? Are there investigations underway where you have had to take staff off to refocus?

Assistant Commissioner Newton—We always operate on a basis of undertaking investigations in the most efficient way we possibly can. Under our model system we do shift investigators to the highest priority work at any particular time, so if we have, say, a counterterrorism investigation then that may take priority over, perhaps, a long-term fraud related investigation, which we can actually stop for one or two months and then continue on with because it will not have as large an impact as some other work.

Mr WOOD—I understand. I suppose this is what I am specifically asking: obviously, if you have a terrorist incident, you would expect that nearly half the AFP would be on that, but at the moment have these so-called efficiency cuts led to investigations, whether fraud or drug related, being on hold or having staff removed from them to meet the budget cuts?

Assistant Commissioner Newton—Overall we have had to reassess some of our corporate support capability in the organisation as well as staff. We have had a number of redundancies in the organisation at the end of last financial year and the beginning of this financial year to ensure that we come within the parameters of our budget allocations for the organisation. A number of those people were investigators.

Mr WOOD—With those investigators, have they taken redundancy packages?

Assistant Commissioner Newton—Yes. Voluntary redundancy packages were offered to employees across the organisation so that we could meet our funding commitments versus our salary and operating costs.

Mr WOOD—How many of those were taken? How many AFP members took those?

Assistant Commissioner Newton—I did not come to this committee with those statistics. We can provide you with the figures as to how many redundancies the AFP had. It was not only investigators; it was also our unsworn support staff. But we will provide you with an up-to-date on that.

CHAIR—Ms Newton, we may also have some other questions which we will flick off to you, bearing in mind the time at the moment.

As there are no further questions, thank you very much with coming along today. We may have some questions to forward to you. The committee will take a break until 11.30.

Assistant Commissioner Newton——Thank you.

Proceedings suspended from 11.16 am to 11.30 am

ANGUS, Ms Mandy, Senior Legal Officer, Criminal Law Branch, Criminal Justice Division, Attorney-General's Department

COCHRANE, Dr Susan, Acting Assistant Secretary, Criminal Law Branch, Criminal Justice Division, Attorney-General's Department

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

McDONALD, Mr Geoffrey Angus, First Assistant Secretary, Security and Critical Infrastructure Division, Attorney-General's Department

SENGSTOCK, Ms Elsa, Director, Criminal Law Branch, Criminal Justice Division, Attorney-General's Department

CHAIR—Welcome. I invite one of you to make a brief opening statement.

Dr Heriot—Thank you for inviting the department to appear before you today. I have a brief opening statement and a slightly longer version that could be tabled if that were helpful to the committee.

CHAIR—Thank you.

Dr Heriot—To combat organised crime effectively, there needs to be a global approach as well as an effective regional and national approach. At the international level, Australia is a party to the United Nations Convention against Transnational Organised Crime, which is the main international instrument to counter organised crime. At the national level, the Commonwealth's approach to serious and organised crime reflects our federal system of government. It is based on a legislative framework that criminalises the types of activities in which these groups may be involved, targets the profits of these activities, provides appropriate powers to law enforcement agencies to combat the activities and provides for international cooperation, including extradition and mutual legal assistance, which is a very important aspect of addressing transnational organised crime. This framework addresses our key obligations under the convention.

In our federal system of government, law enforcement responsibilities and interests overlap, so national coordination and cooperation between the Commonwealth and the states and territories is vital. In considering the possible legislative approaches to serious and organised crime groups in Australia, we also need to be mindful that this is a complex problem that requires a multifaceted approach. Legislation that may target specific groups is only one of the possible approaches to addressing the issue. While we can learn from international approaches, the extent to which overseas models can be adapted to the Australian context must be carefully considered.

The challenges that we face in the organised crime area are serious. Organised crime groups are international, entrepreneurial, innovative and adaptive. We know that while some groups are

structured and readily identifiable, such as outlaw motorcycle gangs, many groups increasingly operate in fluid, loose networks that come together for specific activities, break and reform. To fight them, we need similar degrees of flexibility and innovation in our legislative framework and in our law enforcement.

CHAIR—Thank you.

Senator PARRY—Earlier today, we received evidence from the Australian Federal Police, and some of the questioning was related to proceeds of crime. The New South Wales legislation for proceeds of crime seems to be more sophisticated and broader than any Commonwealth legislation. My questions are three in relation to this. Firstly, is there any mapping or any likelihood that the Attorney-General's Department would be looking at more sophisticated legislation in relation to proceeds of crime, bearing in mind that the disruption of the money for criminal organisations is vital? Secondly, if that is the case, what is the nature of that legislation? Thirdly, if legislation is going to be implemented or is being mapped, is resourcing for Australian Federal Police being taken into consideration, bearing in mind that was one of the concerns of the officers this morning?

Dr Heriot—As you would be aware, Tom Sherman's *Report on the Independent Review of the Operation of the Proceeds of Crime Act 2002 (Cth)* was tabled in late 2006, and it showed that the act was working quite effectively—that agencies were able to restrain and then confiscate increasing amounts of proceeds of crime and, indeed, the amount of proceeds of crime captured each year is increasing. To date, under the new act, as of the end of September, the confiscated assets account has received some $60 million. So each year the amount that is actually confiscated has been increasing. Government has yet to respond to the Sherman report.

Senator PARRY—On that point, is there an expected response date?

Dr Heriot—We expect to put some recommendations to government around a response very shortly. We have been working with our law enforcement agencies quite intensively, looking at the Sherman report and also looking at legislation in Australian jurisdictions. As I said, we have been consulting with our agencies, including the AFP, quite extensively throughout that process.

Senator PARRY—Is there any mapping? Is the A-G's department intending to look at changing the legislation? Your belief is that the legislation is sufficient. Is that what I gather from your evidence?

Dr Heriot—No, sorry. My comment was meant to indicate that the act is working fairly effectively, as Sherman concluded, but there is room for improvement, and that, as part of preparing for government consideration of possible response to the Sherman report, we have been looking at state and territory legislation.

Senator PARRY—Do you believe that would harmonise with the probably more stringent forms of legislation—in particular, New South Wales?

Dr Heriot—We are looking at the state legislation in developing a package of options for the government's consideration.

Senator PARRY—Do you regard the penalties that are applied, that go to the taxation department, in particular from Project Wickenby, as proceeds of crime? It is clearly indicated as a tax penalty, but would you regard that as broadly coming into the aspect of proceeds of crime? And I gather it is not accounted for as proceeds of crime.

Dr Heriot—It is certainly an outcome of the investigation, but technically it would be counted as a tax revenue rather than as proceeds of crime under our legislative definition. But it is certainly all fruit of that combined agency operation.

Senator PARRY—Assistant Commissioner Newton said this morning that there would possibly be some examination of a way of sharing the $40-odd million to date from one of the operations with the Commonwealth. It has been claimed by the New South Wales Crime Commission. Are you aware of that? Secondly, if you are aware of that or even if you are not, how would you see those proceeds of crime being distributed between the Commonwealth and a state agency?

Dr Heriot—There are equitable sharing provisions under the Commonwealth act and there are equitable sharing divisions under some of the state and territory acts. I am not familiar offhand with how the New South Wales provisions would work. However, if there were a distribution of funds to the Commonwealth—and we have certainly had funds from other countries go through equitable sharing with the Commonwealth—they would go into the confiscated assets account, and then payments from the confiscated assets account would be made for the purposes laid out in the act, mainly under section 297 but also under section 298. Under section 298 there is the capacity to approve projects for law enforcement and crime prevention as well as drug diversion.

Senator PARRY—How does the distribution of the proceeds work under the Commonwealth legislation? I apologise that I am not familiar with that provision. Is it on a matter of resources placed in? Is it 50-50? Loosely, what are the parameters governing that?

Dr Heriot—Under section 297, funds are paid out for a range of technical or cost issues, including costs of examinations, legal aid commission costs, costs of ITSA as the official trustee—those sorts of things. Section 298 is a very broad discretion for the minister to approve funding for projects that fall under those four measures of crime prevention, law enforcement, drug treatment and drug diversion.

Senator PARRY—I am sorry; I am going to the source of the money, not when the money has come in. How is it derived—as to whether New South Wales gets X per cent or the Commonwealth gets X per cent?

Dr Heriot—I am sorry; I have misunderstood you.

Senator PARRY—That is okay.

Dr Heriot—If a jurisdiction has had a significant contribution to an investigation that has led to proceeds seizure, then it is put to the minister to determine the equitable distribution.

Senator PARRY—So it is ministerial discretion basically?

Dr Heriot—Yes.

Senator PARRY—Thank you.

Senator FIELDING—I do not know whether you heard some of the discussions this morning with the Australian Crime Commission. I do not know whether you heard some of those conversations around strengthening the tools, the legislation, in being able to combat serious and organised crime groups, but I will just go through it a bit more if I can. We heard this morning, and probably conservatively, that the cost of serious and organised crime to, say, the economy in Australia is over $10 billion. That started to make me think through a bit about whether we have strong laws or whether we need to strengthen existing laws or create new laws to combat serious and organised crime groups in Australia. I went through the fact that it may be hard for the ACC to highlight, for a law that we have, say, in Western Australia, which is on unexplained wealth, whether that should be across other states. It is very hard, maybe, for them, but I thought that, as the Attorney-General's Department, you might have a view not just on unexplained wealth but on other pieces of law. Also, you referenced in your submission the Canadian Criminal Code, and that then goes to other submissions that have gone through the UK, which has laws like financial reporting orders. We heard this morning from the ACC that they seem to be something that should be looked at.

I am wondering whether you could help the ACC, who agreed about providing a chart that would show the laws that are in place in each state to combat serious and organised crime—because they are different for each state. If one state has better laws than another, I think we need to get a handle on it and make some recommendation about whether we should roll out some of these nationally. Also, if another country has stronger laws, perhaps we should include that in a table that says, 'Here is maybe a weighting of the effect that would have in combating serious crime.' You would also probably need a scale on whether it encroaches on privacy, because people's privacy is the issue with these things. I would like to know whether you would be willing to work with the ACC to come up with this table that would allow this committee to look at these things in a rational way, looking at what is possibly out there, what is happening each state and what is happening across the world at this stage. Given that it is costing Australia over $10 billion, we need to get a handle on those issues. Would you be willing to work with the ACC on that?

Mr McDonald—Obviously the department would be willing to work with the ACC, as it does on many things. I can give you a little bit of ancient history on some of this.

Senator FIELDING—Thank you.

Mr McDonald—I think that is probably why I am here! I was involved in the criminal law area at the time that the proceeds-of-crime laws were updated, quite some years ago. Very much the same situation existed then. At the time, they looked at issues like unexplained wealth provisions, and at that particular time the previous government concluded that that went too far. Obviously some years have gone by now, and as part of the process in the department, continually looking at the laws, it can have a look at how those laws have been operating since. But I can tell you that, when there was a major updating of the laws some years ago, a lot of those provisions still existed. They certainly existed at the time and were regarded as just going too far in terms of the chances of sucking up people who may not have deserved to be sucked up.

The international side of it has been the focus of Australia going right back into the nineties. In fact, Australia was one of the countries that led in this area when these laws were first developed.

Senator FIELDING—It is a semicomforting to know that the government of the day looked at it. I am only one member of this committee. I think I would like to open it right up again, just to make sure that we have actually got a decent summary in one place of all the different laws that each state has to combat serious and organised crime, and also internationally, and for that table to be put together on a basis that can weigh up the issues about how effective it is from your point of view—I am happy for that—and from that of the ACC. Then I suppose it is up to the committee to form its view on whether we need to upgrade or strengthen or have new laws in this area, weighing it against the privacy issues that obviously always come up on these things. But we have heard this morning that there is serious money involved in this issue. I think that, at a time when we have a financial crisis on, we need to be making sure that we are doing all we possibly can in this area.

Dr Heriot—We can certainly work with the ACC to prepare a table that will go through the major aspects of legislation and associated mechanisms. Our resources to go around the legislation around the world would probably not extend that far, but we can certainly focus on Canada, the UK and the US. But to assess the effectiveness of these various provisions is very difficult, and we will not be able to do that adequately—if at all, in fact. Many of these legislative provisions are very new. They have not necessarily been tested. Prosecutions have not gone through the courts. We can certainly talk about what the legislation is, what powers it confers and how it operates—again, we can produce that in collaboration with our colleagues—but that in fact may be as far as we are able to go. I notice, for example, that in early hearings you have talked to representatives from the South Australia Police. Their legislation only came into effect in September. It is not possible to talk about the effectiveness of something that young. Similarly, some of the UK legislation is also very new. They have not had matters go through the courts. It is very complex, but we will do our best.

Senator FIELDING—I fully understand that. From there, I suppose on the one hand that you could wait forever to do these things. It is getting that balance right. I suppose I think it is worth having a look at it. There has been a change in government since the last one, so I tend to think it is worth having a fresh look at it. I understand that you cannot find every single law, but there have been quite a few mentioned through this inquiry. The department has probably had a look at quite a few of the submissions. You would probably go through them again on the basis of looking at all the laws that have been mentioned, at least, and any others you have seen of some significance. Really, I think it is something that is worth looking at from there.

Dr Heriot—We will certainly make best endeavours. I should note that this is the sort of activity we do undertake as part of our routine work around criminal law policy and criminal law reform, but we do not necessarily distil it down into a table. But we will make best endeavours. I just did not want to overpromise or lead you to perhaps expect more than we would be able to produce.

Senator FIELDING—Thank you.

Mr WOOD—Just on the South Australian laws, it has been raised before that those would not be constitutional. Do you have any opinion on that?

Dr Heriot—I am afraid we are not in fact able to assist the committee on that.

Mr WOOD—No?

Mr McDonald—As you know, constitutionally you have to look for a head of power.

Mr WOOD—Yes.

Mr McDonald—Sometimes you get the power by putting together a whole matrix of constitutional levers—sometimes there is potential for that—but we would not be able to be very specific about that—for example, with the terrorism laws you will recall that we rely heavily on the defence power now since the High Court accepted the control order regime.

Mr WOOD—Have you had a good look at the South Australian laws? The question has been raised numerous times in this committee about having standardised or national laws. If the South Australian legislation does work, could you actually have matching Commonwealth legislation or would you have to again rely on the states in a similar way to the terrorist legislation?

Mr McDonald—Interestingly the South Australian law has a lot of similarities to the terrorism legislation—in fact, it looks a little bit modelled on it. When the terrorism legislation was enacted it was regarded as being in very exceptional circumstances that you would have those sorts of laws. And, if you have a look at the provisions which outline the constitutional basis of the terrorism laws, the Commonwealth jurisdiction pulls together many different heads of power. Then, just to make sure of it, they have a reference power. As it worked out, when we argued the case in the High Court, they decided that the terrorism laws were supported by the defence power. However, clearly it was difficult enough with terrorism to put a constitutional framework under it, and to actually have a general law like you have in the South Australian law would, of course, be much more difficult constitutionally. No doubt it would be a patchwork type outcome, which is not always good for law enforcement if there is uncertainty about what the coverage is.

Mr WOOD—With the terrorism legislation, the states have referred their powers to the Commonwealth. If there were an attack and the states decided not to use the federal terrorism laws and reverted back to their state laws, would that cause any legal consequence?

Mr McDonald—There is no difficulty with the states charging someone with a murder offence—in fact, if attempted murder or other offences is easier to prosecute there is no problem with the states prosecuting people on that basis. The terrorism laws are focused very much on preparatory activity and they try to be more specific about that preparatory activity so that you do not have some of the complications you would have with trying to prove conspiracy, incitement and aiding and abetting. So always the terrorism laws have been understood to allow the states and territories to prosecute with their traditional offences if they want. In fact, the legislation makes it pretty clear that it does not bar the states and territories. Of course, the states and territories work with the AFP when they do prosecute people for terrorism offences—they are very actively involved.

Mr WOOD—Are you aware that the evidence we received from the Victoria Police Superintendent Hollowood actually said that if there were an incident they would actually rely on the state laws rather than the Commonwealth laws because of their complexity and other issues involved?

Mr McDonald—I was not aware of that. When there is a terrorist incident there is usually a joint task force and they work out which laws are used in that task force, so it would be unusual to be able to say that with every case you were going to do something like that. But they are joint task forces and there are some distinct advantages in using the national laws, given that they cross borders and terrorism has extraterritorial coverage which goes well beyond what any state could legislate for in terms of the extraterritorial coverage. So given that it is an international crime, and given that quite often there is potential for it to be cross-border as well, generally I think investigators would probably take the safer course and use the federal law. There is no uncertainty about the constitutional effectiveness of the federal terrorism laws. In fact, the High Court has well and truly put that one to bed.

Mr WOOD—I think the issue is with regard to preventative detention, where there is a specific clause saying that a person in custody cannot be interviewed and that what they say cannot be used in evidence against them. Obviously they have to be released and rearrested under part IC of the Crimes Act. While Victoria state police use 'reasonable time' to have a person in custody, with this other way—the 14 days—they cannot actually ask any questions. I wonder if you saw the *Four Corners* program recently where, again, the AFP were saying through their spokesman from the association that the laws regarding preventative detention and other aspects are exceptionally complex and hard for investigators to deal with. Can you comment on that?

Mr McDonald—You have rolled a few things together there.

Mr WOOD—I certainly have.

Mr McDonald—I will start with the first issue, which is why we have preventative detention and investigative detention. The main reason that we have separated them in this way is that we have designed each law to fit the purpose. With investigative detention there are a whole heap of safeguards, such as recording what is happening, ensuring that the person is afforded rest breaks and the like, so that there can be no question about the voluntariness and appropriateness of the questioning. So the provisions for investigative detention focus on that. There are limits on the time that a person can be questioned but, as we saw last year, it is possible to get a magistrate to extend those periods as appropriate. Indeed, the periods that they were extended by were probably far beyond what would ever have been acceptable to a court under the old style Victorian provision of reasonable time.

Mr WOOD—Can I just interrupt you there. Under the Crimes Act, the interview time limit is 48 hours—correct? So under the definition of 'reasonable time' in Victoria they have the opportunity, as you say, to go before a court and prove their case. I do not think that is quite the same.

Mr McDonald—What I was driving at is that with the dead time component, which is the time that can be used—

Mr WOOD—For sleep or whatever else—

Mr McDonald—And also going through computer data and stuff like that, you can get extensions that are quite a lot longer. We have not had a situation where the AFP have not had enough questioning time within those time frames.

Mr WOOD—Because we have not had an incident.

Mr McDonald—We have had situations where we have had a very complicated investigation, but we have not gone close to using the limits to their full extent. I will now mention preventative detention—which you also mentioned—and why we do have questioning during preventative detention. The purpose of that detention is not questioning. The purpose of that detention is if there is a concern about the risk of that person—for the safety of the community—or a concern that that person might go and get rid of some evidence.

It is a totally different purpose and, because it is a different purpose, the period can be up to 48 hours at the Commonwealth level. At the state level it can be 14 days. That is because of constitutional reasons rather than anything else. We received advice from the chief general counsel. That advice was explained at the time, so I am not breaching any advice rules. Constitutionally, it was felt that, with the limitations that apply to the federal government, it would not be possible to have more than 48 hours of this preventative detention. However, it was thought that the state governments could have a longer period. Consequently, the state governments made similar laws that made it for a longer period. That is the reason you have those two different systems operating.

Mr WOOD—Thank you.

Mr HAYES—In the main, the law enforcement authorities that have appeared before the committee today, with the exception of those in South Australia, have taken the view that it would be far better to have consistent, if not uniform, applications of laws when it comes to serious and organised crime, either by a national law or, alternatively, by complementary state and territory laws bearing the same provisions. Do you have any view about that?

Mr McDonald—I have a bit of ancient history with that one, too. About 10 years ago, I was involved in a project to develop uniform DNA laws. Even though people were trying, it took a long time for the states and territories to get to a point where we had some consistency between them. I think it is—

Mr HAYES—Peter Falconio brought it to a head, didn't he?

Mr McDonald—One of the reasons it takes a long time—we certainly found it with DNA and we will probably find it with this too—is that the individual parliaments themselves have a different tolerance of how far the laws should go. For example, when we were putting the DNA laws through 10 years ago, the Northern Territory were ready—it was open slather—while New South Wales, Victoria and the Commonwealth were much more cautious about having DNA provisions whereby you can use the DNA only for the particular purpose. That was quite a good example of how it takes some time to get consistency and how it is a very difficult process.

Mr HAYES—It is also an issue of process. Using the example of DNA, it was not so much the establishment of a national DNA law. The relevance of the Commonwealth centres on the fact that it put its hand in its pocket and put the money forward on the basis that each of the state and territory jurisdictions would implement complementary legislation. Clearly, they did not do that. They went back and some customised it more than others.

Mr McDonald—They sure did.

Mr HAYES—As I said, the Peter Falconio case brought it to a head. Is there a role for the Commonwealth to take a leadership position when it comes down to such issues, particularly with serious and organised crime, not necessarily through a head of power but through appropriate facilitation to sponsor uniform and consistent legislation applying throughout the Commonwealth?

Mr McDonald—The Commonwealth has done that consistently for a long period of time with evidence laws, the Model Criminal Code and the proceeds of crime. We have developed surveillance device laws and even assumed identities laws. So over the years the Commonwealth has engaged with the states to try and get greater consistency, but there has been mixed success. It is highly resource intensive.

Dr Heriot—The focus on harmonisation has certainly not abated. It is an issue that is considered in the relevant ministerial councils. Recently there has been work around harmonisation of laws in the area of identity crime, for example. The issue is that it takes a long time to develop a model that will fit the various jurisdictional codes or common-law settings. Then there is the public consultation around that and the finalisation of a model. Then of course it is off to the various parliaments to consider enactment. It is a resource-and time-intensive process.

Mr HAYES—That almost makes it technically impossible. As I recall, a decade and a half ago the police ministers council made a resolution seeking the establishment of a national criminal code that they could all sign up to. I understand there have been bits and pieces done to that in due course. Many, many Commonwealth, state and territory elections have been dominated by law and order, and it seems to continue to dominate a lot of the political debate today.

Mr McDonald—A huge amount of resources has been put into harmonising laws. The federal government has pretty well implemented a model criminal code. That has been implemented by the ACT, and other states have implemented bits and pieces of it. It is quite a good example of how governments can work cooperatively to put together good laws. At the same time, it is also an example of how independent each of the parliaments is. I am not saying that the area of serious and organised crime is not an area where we can work together in the way we have with proceeds of crime and other stuff like that, but it is likely to be an area where different jurisdictions will have different views and it is not something that would be achieved quickly.

Dr Heriot—It would be fair to say that, of the various elements of the model code, some have been easier to enact at the state and territory level than others. The sex slavery and sex servitude provisions are very widely enacted, for example. They proved to be not problematic. There were a lot of issues around the DNA provisions to start with. So it varies.

Mr McDonald—DNA is one where there was a huge tension between what the police wanted and what privacy advocates and civil libertarian groups wanted. The comparative strength of those two lobbies varied enormously between the different states and jurisdictions. It is half the reason I have gone grey—trying to come up with something that people were happy with. It took a lot longer than we expected. However, it is something that, as a country, we have to persist with. It also has the effect of drawing together the good resources of each jurisdiction—the minds and thoughts.

Mr HAYES—It always must be needs based. It is not just about working out who has the toughest legislation and imposing it for no apparent reason. But when you cannot get unanimity amongst the chief crime fighters across the country to a piece of legislation like South Australia's and the collective response is, 'We're going to suck it and see what happens,' I am not sure that is the best response from those who lead the fight against crime.

Mr McDonald—The control order provisions and preventative detention provisions which we spoke about a little while ago were in the context of terrorism, where there was an absolutely amazing degree of cooperation between the Commonwealth and the states. But putting those laws together and ensuring there was consensus on them was extremely difficult, and that was in the circumstances of a terrorist threat. Extending those terrorism laws in the way they have done in South Australia to a very wide range of circumstances would probably be a pretty difficult process.

Mr HAYES—You raised something in your statement to the committee that in dealing principally with the provisions in Canada—this is something I was not aware of in terms of the Canadian criminal code—there would be various aspects that one can be charged with as opposed to just a straight out consorting law. So is it dealing with the level of participation within criminal organisations? It is on page nine.

Mr McDonald—I will let my colleague answer that one, but when we reviewed the Canadian terrorism laws I was very surprised at how wide some of their laws are, notwithstanding their charter of human rights.

Dr Heriot—I am sorry, Mr Hayes, I am not quite clear about what your question is, beyond noting that we noted it in our submission.

Mr HAYES—It is just something that I am completely unfamiliar with in terms of the Canadian criminal code, which provides for separate offences to correspond with the offender's level of involvement within an organisation. Not being a lawyer, I do not know of anything here—

Mr McDonald—It would be complex to prove.

Mr HAYES—I am not aware of anything else I have seen like that elsewhere. Is that an association power to which the courts can, depending on your association within an organisation, attach a weightier sentence?

Mr McDonald—We tend, as criminal law policy and just generally in the criminal laws in Australia, to go towards having a maximum penalty and giving the court quite a variety of

discretion under that maximum penalty. So you can achieve what they are doing there just under normal sentencing principles. There are circumstances where we have been quite specific to the courts. One of them is our money laundering laws, where the sentences are linked to the amount of money as well as the degree of fault.

Dr Heriot—I would note that the utility of these measures is still a question. I understand that there have not been significant prosecutions under these provisions to form an opinion as to their effectiveness, which, I am sorry, is probably irritating for the committee. Also, there have been criticisms within Canada around the breadth of the offences, covering, as they do, serious involvement to minor association, and that has provoked concerns about inappropriate criminalisation of activity and issues for Canada about freedom of association. I have not seen a large jurisprudence about how that has worked. That is one of the aspects of why we are looking forward to the results of Dr Schloenhardt's research. He noted the Canadian model quite extensively in his submission.

Ms LEY—You talked about the balance between those who would be quite proactive around control orders and counterterrorism and those who would take a more civil libertarian approach. Of course, that is the very issue you are grappling with. Where do you think that balance is in the community today? What are the trends? What influences it? These are broad perspectives, not specific. I am happy for everyone to answer.

Mr McDonald—I think politicians are probably in a better position to judge what the community thinks and what they want than public servants. I find public servants are absolutely hopeless at these things. I would not—

Ms LEY—But you do deal with the interest groups continually.

Mr McDonald—Yes. The end of the question was about what the community would think. I would not want to express what the community would think. The key factor that came into it with the terrorism provisions was, factually, that there had been some large attacks that affected Australians. There were Australians killed on September 11, there were Australians killed in London during the attacks there and there were many Australians killed in Bali. I need to be careful about cases that are before the courts in Australia, but there was a gentleman in Sydney, Mr Lodhi, who was convicted of a very serious plot. That matter has been taken to appeal, and all the appeals are over. He was imprisoned for 20 years. That case was a case that was going through the courts at the time the terrorism laws were enacted. There was a real plot in Australia.

There have also been other cases involving plots in Australia. There was a recent case in Melbourne where there were verdicts of guilt. I think those incidents clearly had an impact on people's willingness to have these laws. It is interesting: some of the laws go back a long way. Some of them have their roots in laws that had been enacted in the past. For example, during the 1920s there were quite a few association type offence provisions of this nature which were enacted because of fear of communist activity at that time. During the First and Second World Wars, there was fear of spies within the community and real examples of such people as well. The community and politicians seemed to accept more significant provisions in those circumstances. It is interesting that many of these provisions, especially the controlled preventive detention order provisions, have sunset clauses on them. The politicians at the time

were clearly mindful that they would later want to have a look at whether these laws should continue when things quieted down.

Ms LEY—Given that level of acceptability because of terrorism offences, what do you see as the problems in looking at the same types of legislation for serious and organised crime? Obviously the provisions would not be mapped across exactly, but broadly there are initiatives in different states to have the same types of restrictions on organised crime groups.

Mr McDonald—Terrorist crime groups have a few features which are striking. One of them is that they are largely global phenomena and are politically motivated. Within the country, it has potential for a cross-border element tied in with the international side. They stand out as being more significant than other types of crime.

Many people have said about the terrorism laws that these are exceptional circumstances. A lot of the critics at the time were saying, 'We hope there isn't going to be bracket creep on this.' Even amongst the people that talked in the debate about the terrorism laws, there was a feeling that they were about exceptional powers. The reality is that there have been other situations in the past when the community and the politicians came to the same conclusion.

Ms LEY—One other related question: what would it take to increase the penalties for so-called white-collar crime? We have heard evidence in this committee about Operation Wickenby. We have not specifically heard evidence about the length of time of some of the sentences. Some are yet perhaps to come. Is your department able to consider that or are you currently looking at it?

Mr McDonald—I have to very careful about how I answer that question because I am worried that it could be associated with a specific case. I am not talking about that specific case. There have been occasions in the past where concern about organised crime has been such that we have enacted special laws. You just have to look at what we have done with money laundering and the proceeds of crime legislation has been toughened up before. An enormous amount of work has been done on drug crime over the last 20 years. Clearly, there have been occasions where it has been felt that people got off perhaps more lightly than they should have. Whether those observations are correct is sometimes hard to discern because there is a thing called evidence too and sometimes the evidence might not support a harsh penalty and the judge will decide that the person should not get the maximum penalty. They actually have a good reason for it but that is not always understood by observers.

Dr Heriot—It is for governments to determine whether penalties should be increased and what a maximum penalty for an offence should be but the sentencing is a matter for the court. The court will of course, as Geoff has indicated, always have regard to the circumstances of the particular matter. Usually in their sentencing statements they will explain the course that led the judge to set that particular sentence. It is always quite specific.

Mr McDonald—The motivation behind increasing penalties is sometimes for the parliament to send a signal to the courts to give stronger penalties. You might actually lower a penalty because you think they are dishing it out too much. But under our system the courts have discretion. I suppose the comment I was trying to make there was that is actually a pretty crude mechanism for responding to specific cases because there can be a lot of factors as to why the

court sentenced in the way it did. I have seen situations where governments have increased penalties but still the courts determined similar sentences due to their interpretation of the specific case.

With respect to money-laundering offences we have heaps of different penalties for different amounts of money that have been laundered. It does not take much of a stretch of the imagination that the reason was that we thought the courts were not dishing it out sufficiently on money laundering at the time and it gave the courts more of a structure in those circumstances. Whether or not it made any difference, I could not comment.

Dr Heriot—There is always an endeavour to set a maximum penalty which operates as a deterrent but which also signals the significance of the crime to the general community.

Mr McDonald—The whole purpose of the criminal law is to change behaviour and if you can change the behaviour with the enactment of an offence without prosecuting anyone then you have really won.

Senator FIELDING—How seriously should Victorians take the threat that bikie gangs are coming in from South Australia because of recent laws that have been introduced? I have seen many articles on this time and time again. I am Victorian, so I want to know from your perspective. The law has changed in South Australia and I have seen on the front pages of newspapers and in various places that bikie gangs are coming to Victoria from South Australia. Is that real?

Mr McDonald—That would have been a better question to ask the police. We are not across all the operational information, unless you have something.

Senator FIELDING—I asked the question on the basis that that is the law in South Australia. Again, you are talking about national laws across the board and they have obviously made a change. Is that a concern to the department?

Mr McDonald—I do not know whether or not that is correct. In the drug area, for example, people have perhaps favoured particular jurisdictions where you have differences in personal use of marijuana, for example, it might be different in different states. That may be a factor why some people go to different states. I do not know. I do not think that is something we are able to assist you with.

Dr Heriot—I imagine that Victoria Police might have a sense as to what is happening. There is an issue as to whether there is a displacement effect due to the new legislation and there is the issue of whether it is sustained once the legislation starts to operate in the relevant community. We do not have any information to assist you with either.

CHAIR—We have some questions that we will direct to you on notice. If you could respond to them it will assist us in completing our inquiries.

Proceedings suspended from 12.28 pm to 1.03 pm

BUDAVARI, Ms Rosemary, Senior Policy Lawyer, Law Council of Australia

MOULDS, Miss Sarah, Policy Lawyer, Law Council of Australia

RAY, Mr William Ross, QC, President, Law Council of Australia

CHAIR—I welcome the witnesses from the Law Council of Australia. I now invite you to make a short opening statement, at the conclusion of which members of the committee will ask you some questions.

Mr Ray—The Law Council of Australia is very grateful to have this opportunity to talk to you. We at the Law Council are very concerned at legislation such as may be proposed here reflecting the South Australian and the New South Wales legislation. We express concern on each of two bases, fundamentally. Firstly, there is no evidence to say that the existing laws are inadequate. It is clear that there are a range of laws that refer to conspiracy and substantive offences and investigative powers that are adequate. Secondly, there is no evidence to suggest that the changes proposed will in fact introduce advantages for the control, regulation, detection and punishment of organised crime. That is clearly so, and there are some issues that have some parallels in the introduction of the terrorism legislation. It is interesting to note that even, for example, to my knowledge, the Victoria Police say, 'Look, there are some potential downsides to this legislation because you can drive some of these groups underground and you can make it more difficult to survey, to monitor, to collate information and to prosecute.'

We are very concerned about the introduction of laws that further erode fundamental principles that have been established—for very good reason—for up to over 200 years and that recognise the rights of individuals. The notion of prosecuting people for associations rather than substantive offences is really quite abhorrent. If somebody is involved, is sufficiently proximate and commits an offence, even one of an attempt or one of a conspiracy nature, then the existing laws are there to deal with them. It is very clear that not only do some of these laws have the potential to be structurally unfair and restrict relationships—they introduce laws that are really Big Brother laws, dictating who you can talk to and where you should be—but they also create other issues of accidental capture of conduct that is clearly not criminal. The accidental capture of such conduct is a reflection of legislation that is emotively introduced, such as the terrorism legislation, and has within it changes that are based on fear rather than the logical application of law.

So we would say very clearly that the substantive offences that are referred to in the Commonwealth Criminal Code Act 1995 and the investigative powers that clearly exist are adequate. Secondly, there are real problems with introducing the notion of guilt by association. Thirdly, the legislation that has been introduced has, we would submit, some real issues that demonstrate that the law is not necessary. It is interesting to note, for example, in New South Wales, that the legislation as introduced, to my knowledge, has led to some 168 charges. Of those charges, only half of them have led to convictions—that is, of these sorts of offences under the New South Wales legislation. On no occasion has there been a conviction only of those specific breaches. They have always been hand in glove with other substantive offences. So we should say to ourselves, 'What's wrong with charging the substantive offence?' If there is a

specific intent that is more heinous in nature, that becomes an aggravating factor for sentencing and is appropriately dealt with within the criminal justice system on that basis. You already have our submissions. I raise those issues as introductory, and I am now very happy to deal with any issues that you would care to raise with me.

CHAIR—Thank you. Would your colleagues like to make any comment?

Ms Budavari—No, not at this stage, thank you.

Mr WOOD—Thank you very much, Mr Ray, for attending today with your colleagues. We have heard today evidence that serious and organised crime is reaping $10 billion each year from the Australian economy, so you can conclude from that that the existing laws or policing techniques are not working. We have heard this right across the country from various law enforcement agencies. How do you respond to that, and what solutions do you see?

Mr Ray—Immediately, I do not think that is the only inference that can be drawn. I have recently given a paper on money laundering in Kuala Lumpur at the LawAsia Conference, and I have done so in Amsterdam and other places this year—and of course the Financial Action Task Force has produced a number of guidelines to be introduced by each country. The fact of the existence of organised crime and the fact of the existence of the transfer of moneys does not automatically mean that the existing laws are not working. It is also a question (a) of the law and (b) of its implementation, and investigative powers, of course, are a relevant part of that.

What we have been doing in the climate since 9-11 is constantly balancing the proven need for change against the fear of not changing because we are facing a new problem. For example, with the introduction of the anti-money-laundering laws, based on significant black market money transfers, we have asked the government for topologies of proof to demonstrate the unwitting use of lawyers in that role. The answer is that the government, the Financial Action Task Force and the regulators in England, Canada, America and Europe are not able to point to the conduct that in fact would be revealed through this legislation. The interesting thing for you as people who are monitoring the potential introduction of these laws is to say (a) apart from apocryphal references and the reality that there are money transfers and that there is of course a degree of organised crime—and that is a reality—will these laws introduce effective change that the current laws will not effect and (b) in doing so will they abrogate fundamental principles of fairness in the community? To my knowledge, the mere reference that you raise is not a reference that says to me the existing laws do not work. In the South Australian circumstance, has there been a prosecution with the group declaration of an association of people? I do not believe there has been. If the law is in existence and it has not been utilised, that is in effect a comment on whether we need it. It is a law that introduces an extraordinary liability based on association, not conduct—a concept previously unknown to the law.

Mr WOOD—You mentioned fairness before, and that is a concern of a lot of Australians. We discovered that especially when we went over to South Australia, and I know Western Australia is the same. We have outlaw motorcycle gangs and obviously they have become a focus. They approach business people with their colours on and use branding to intimidate and to reinforce what they are doing. The major problem was getting witnesses who were prepared to eventually put their hand up in court, because of the intimidation factor. How do we get over stopping that sort of intimidation? We want to hear solutions. Whether it is the police, the judiciary or

whoever, people are reluctant to say: 'This is what we believe. We recommend this sort of action for the committee to actually target serious and organised crime.'

Mr Ray—In my view, it is a reverse onus position. That is, those who want this legislation have to justify it. It is not up to the broader community or even the Law Council to say, 'This is why you shouldn't do it.' What you are doing by introducing this is eroding fundamental principles of criminal liability that have been created over 200 years. That is the first point. I will deal with why they should not be introduced in a moment, but frankly it is not up to us to say, 'This is why you shouldn't do it.' It should be up to those who say, 'We must have this change because we prove to you on empirical evidence that it's necessary.' That is the first point.

You talk about the power and influence of some of these motorcycle gangs. I am familiar with them because many years ago I prosecuted the Hells Angels for conspiring and actually manufacturing amphetamines in Victoria. It was a very significant trial and ultimately involved one of the senior members of the Hells Angels, who had gone off to the Oaklands chapter in America to learn how to cook amphetamines so he could come back to Australia and participate in the illicit manufacture. I have a degree of knowledge about such groups.

The power of association is one that should not likely by itself lead to criminal liability. The reason for that is clear: it is like a company, and there are fundamental laws in a company dictating whose conduct becomes the conduct of the company. It is called the law of attribution. The conduct of a person in the company under civil law may bind the company but under the criminal law ordinarily will not, historically, unless that person is the mind and will of the company—quite senior—or further down the company if it were to do with other rules of interpretation based on the articles of association or the incorporation et cetera of the company. We need to be very cautious about attributing the conduct of individuals to organisations without clear definition and clear proof. What you do once you do have such attribution and such rules is to then talk of introducing quite extraordinary powers to prosecute and convict on criminal offences that are currently not known to the law. So there are real potential difficulties.

The solution to these sorts of issues is quite clearly the adequate definition of offences. Indeed, they are already adequately defined. Some of the notions that are raised here do not have within them adequate definition. If you are going to introduce laws, they must adequately define precisely who is captured and what conduct is captured. Frankly, the current proposals do not. Even the South Australian legislation and the New South Wales legislation, frankly, do not adequately define.

Mr WOOD—Is there anything in the South Australian legislation to do with declaring an organisation? Are you opposed to that too? We are talking about associations. Is there a blanket dislike of the laws?

Mr Ray—Absolutely, and logically so. What troubles me about the blanket declaration is that you have legitimate friendships and relationships with neighbours and with relatives that suddenly subject you, through those relationships, to a potential criminal charge. That is quite extraordinary. I know that in the South Australian legislation they do exempt certain relatives so that a spouse, former spouse, brother, sister, parents and grandparents are exempted. But there would still be a broad range of relatives that many people would keep in touch with and there would be absolutely no criminal intent behind that contact and yet it would be the creation of an

illegal relationship. We have to be very cautious in this day and age about creating criminal offences that are new and do not reflect criminal intent or criminal conduct.

The other, I think, good example is the New South Wales approach to this legislation. The Crimes Legislation Amendment (Gangs) Act introduces legislation that we find extraordinary and we do so for the following reason: what it does is to, again, define relationships and extend criminal conduct. I can give you an example. What it does is to suggest that there are new offences. The new offences, for example, are participation in a criminal group knowing that it is a criminal group or being reckless about that. That can lead to criminal liability and a punishment of up to five years.

Many of us have kids. Let us say that there are three kids who are talking about going out and painting some graffiti. That is criminal damage and would be criminal activity that would come under New South Wales legislation. Those three kids come up to one of your kids. Your kid would not participate in the normal way of aiding and abetting or being a joint venturer in a criminal conspiracy, and yet they might say to them, 'Do you know a nice blank wall that we can paint on?' Your kid answers, 'Yes, I do. It's at such and such a place.' But the kid does not want to participate—under the rules of aiding and abetting, as I said, there is no offence—and the three other kids go away and actually start painting and commit an act of criminal damage. The New South Wales legislation is broad enough to introduce criminal liability to the child who has participated recklessly, arguably even knowingly, in a serious criminal offence—one of criminal damage—leading to imprisonment for up to five years. That legislation surely could never have intended to capture that sort of conduct. It is the unintended consequences of this sort of draconian legislation that we are concerned about.

Mr WOOD—Could I just digress a little bit. I am sure that you have a fairly good knowledge of Commonwealth terrorism laws. Would that be correct?

Mr Ray—I have knowledge of them.

Mr WOOD—Regarding one of the issues on the referral of powers from the state to the Commonwealth, there have been concerns raised that, if we did have a terrorist attack and the states did not use the Commonwealth terrorism laws and went back to their state legislation, that may be unconstitutional. Do you have any feelings about that? Are the states bound to use the federal laws or can they actually just use their existing state laws?

Mr Ray—The immediate response is that the Commonwealth does not have criminal legislation, fundamentally. The criminal legislation is state based. The Commonwealth does have express powers when it comes to transnational organised crime and terrorism. There could be an argument that laws to regulate internal criminal laws, such as organised crime within Australia, is beyond the power of the Commonwealth. That is an area of potential difficulty for those who are drafting this sort of legislation.

Mr WOOD—I am actually trying to find out about terrorism legislation which has been passed—it is involved in the inquiry—so I am more after your legal opinion as to whether it has been discussed—

Mr Ray—I could invite Sarah or Rosemary to contribute, but I am certainly not aware of any specific constitutional challenge. It is an issue that has been raised: if the law is misused for domestic criminal investigative purposes. That is a potential issue.

Mr WOOD—I suppose I am more after: if there was a terrorist attack and, say, the state police said, 'No, we will not use Commonwealth terrorism legislation; we will revert to our state legislation,' because they have referred their powers to the Commonwealth, will that cause any problems?

Mr Ray—No. For example, in Victoria, if there is a conspiracy to commit criminal damage or a conspiracy to murder by planting a bomb at the MCG on grand final day, no matter which team is playing, it might be an offence. The reality is that that is an offence under the Victorian Crimes Act and that would be an offence properly investigated under the powers within that state, and charges could, would and should be laid. There would be no difficulties with that occurring within Victoria.

Mr WOOD—Even if it has been declared a terrorist incident, it would not make any difference? I know you would have to be fairly au fait with the terrorism laws with these questions.

Mr Ray—I would hand over to others and invite their comment. I spoke at the Clarke inquiry. Issues were raised at the public hearing component of the Clarke inquiry in relation to terrorism laws. Two of the speakers raised the issue of whether or not these extensive terrorism laws were necessary. Underpinning that view is the opinion that the state laws, properly interpreted and properly enforced, cover those acts of terrorism. Why? Because there is a conspiracy to kill or a conspiracy to do criminal damage. In those circumstances, the state laws can adequately cover them. Regarding a declaration, which is what you raised, Sarah may have a view about that.

Miss Moulds—No. We could take it on notice.

Ms Budavari—We would have to take it on notice.

Mr WOOD—Could you take that on notice? I would be very interested to find out.

CHAIR—Equally, if we could get a copy of your paper that you delivered in Kuala Lumpur on money laundering.

Mr Ray—That is a broader paper and it is an interesting issue in relation to the capture of the conduct of lawyers when primarily in the first tranche of legislation they were looking at bullion dealers, casinos, jewellers and a range of other people. The first tranche of that legislation has already gone through and it involved the accidental capture of some of the conduct of lawyers simply by the entry of moneys into trust accounts and movement out.

The next tranche of legislation is due to come through soon, with ongoing relations and discussions with the government. That second tranche of legislation will cover a range of conduct which will be a risk based analysis by the profession, the adequate client identification, a range of issues and the most contentious issue being the suspicious transaction reporting issue—which is arguably to be imposed on lawyers in circumstances that will cause them to

change from being a confidential adviser to being a covert, state based informer. It creates a fundamental tension in the obligations and duties of lawyers to their clients. That has been implemented in some overseas countries and rejected by some overseas countries. That paper is not strictly on all fours with this, but it certainly might be a matter of a broader interest for you.

CHAIR—Thank you very much. If you could pass that on to us, that would be great.

Mr HAYES—Thank you very much for your paper. Obviously we have spent a lot of time so far looking at the South Australian legislation and also determining that there is no unanimity about all of this. Does the council agree with the submission of the police in South Australia and the government in South Australia that—without putting words into their mouth but to summarise—this is to deter people from becoming members of organisations that may have a criminal intent in order to prevent the participation in crime? Or do you hold the view, which I think was the South Australian bar council's position, that criminal law is effectively based on committing the crime and then being prosecuted for having done so?

Mr Ray—I agree with the South Australian submission to the legal profession's submission to you, but normal criminal legislation does recognise that there is not only a fundamental deterrence effect through the normal criminal justice process but the community is entitled to protection through the early detection of crime. We should accept that and we should accept, for example, that the adequate and appropriate use of the listening device legislation and the adequate use of surveillance legislation—that is surveillance powers—should enable an effective police force, properly resourced, to actually investigate crime before it occurs, based on the information of appropriate criminal information, and to act and charge people with, for example, conspiracy to commit the offence. You can do so, as long as you have the evidence, and you can thereby prevent the occurrence of the offence itself. So, yes, I agree with the South Australian legal profession that criminal law, as it is, ordinarily relies upon the commission of an offence and appropriate use of the law to punish those who do it. But the existing law still provides for the adequate investigation of material and charging of conspiracies before offences occur and, in that way, the community is protected. That happens already with conspiracy to import heroin and conspiracy to commit a range of offences where effective investigations lead to the arrest, charging, prosecution and conviction of people and protection of the public before the offence is committed.

What we do not want is to say we will now deter people from joining a particular group. As has been said by a number of the police forces, the mere declaration of a group as an undesirable, criminal or illegal group—you can call them anything you like—has a number of consequences. Firstly, it is often on imprecise material. You would like judicial oversight for that declaration, were it to occur. Once you declare it, you are often then driving the operatives within that group underground, and you make the surveillance, the monitoring and the charging of those people so much harder. What you are also doing is running the risk of declaring bona fide groups or individuals to be criminals by mere association and without any involvement in a criminal offence.

Mr HAYES—What you are saying is pretty consistent with the views of the many law enforcement officers that have already appeared before us.

Mr Ray—That is reassuring.

Mr HAYES—There is always going to be a victim in waiting for a crime to make a successful prosecution, because we are waiting for the crime to occur. Going back to what you said about surveillance, I am not sure the Council for Civil Liberties took the same view as you in terms of when surveillance activity was actually introduced into the legislation. Is that something that was introduced against the wishes of the legal fraternity that has since proven to be of use in deterring crime?

Mr Ray—Let me go back to the example that I gave you—that is, my involvement in the prosecution of the Hells Angels. After some information was received by members of the Victoria police force, the area where the Angels were manufacturing amphetamines, a place called Hurstbridge in outer suburban Melbourne, and those individuals were then subject to surveillance. There was a listening device appropriately obtained by a warrant and with judicial scrutiny and approval. That listening device was inserted into the premises. The comings and goings of people were recorded and reported. There was then subsequently a raid on the premises. Through the appropriate use of existing powers, a prosecution occurred where existing members of that particular group were convicted of criminal offences. That seems to me to highlight the efficacy of the existing law, and this is going back to the mid to late eighties. It highlights to me that, properly used and without encroaching at all on innocent people's civil liberties, the appropriate law was utilised and, with listening devices and surveillance, successful prosecution occurred.

Mr HAYES—Was there supporting evidence for the prosecution given by fellow Hells Angels against those that you targeted?

Mr Ray—At the retrial there was a person who was a recently retired member of the Angels who gave evidence against existing members of the Hells Angels.

Mr HAYES—But there was a code of silence.

Mr Ray—There historically was, to my knowledge. That person gave evidence in circumstances where he expected some pressure to be applied to him. He relocated, and in the lead-up to the trial there was a suggestion that he was subjected to some interesting visits by other members of that group. It was probably the first time in the world where a former Hells Angel had given evidence against other members.

Mr HAYES—So you would accept that, with serious and organised crime and with OMCGs in particular, you cannot simply serve someone with a notice to appear and give evidence in court and expect them to comply with it.

Mr Ray—I agree, but there are real problems with the application of the coercive interview power—for example, pursuant to the Victorian act, the Major Crime (Investigative Powers) Act. That creates some difficulties where, say, there is an individual who is an innocent neighbour in the location where a bikie group might be conducting some illegal activity. To suggest that that person can be taken off the street, taken before an investigative body, have no right to remain silent and be coercively interviewed creates real issues. That is an act that I think takes the investigative power too far. It is an act introduced in Victoria based on one particular, very large, investigation into one very significant, affluent family. Often single instances are the cause of the introduction of bad legislation. I am concerned about the use of coercive powers in broader

criminal investigations. It has to be used very sparingly. But I do recognise that it is often not easy to get witnesses before a court when they may perceive personal risk. That is why the adequate use of investigative powers and the proper preparation by competent police officers is vital.

In my view, the case that I referred you to—of the prosecution of the Angels—was in fact properly proved on normal admissible evidence. It became a bonus that one person, who was the highly competent, internally trained chemist in the investigative process, turned around and gave evidence for us eventually.

Mr HAYES—I know that this is not where your submission went, but from your observation and having regard to the fact that you represent both prosecutors and defenders and all those who are professional practitioners of the law, would you consider that we have problems associated with serious and organised crime in this country?

Mr Ray—The answer is yes, of course. On all evidence properly introduced, there is a problem with crime full stop, and a portion of it is, of course, organised crime.

Mr HAYES—We have seen recently in the UK the making of amendments to the application of criminal law, in certain circumstances withdrawing the right of silence, and special legislation being introduced in other parts of the world in terms of serious and organised crime. Should we be considered any different out here?

Mr Ray—No, but you should look to not only the introduction of legislation elsewhere but the consequences of that introduction and the criticism raised in relation to it. An example is the introduction of the anti-money-laundering legislation in England. That led to the suspicious transaction reporting obligation that I have raised previously. That in turn led to, in the first 12 months of that legislation in England, 14,000 suspicious transaction reports being made. The information was too great, it overloaded the regulator, and less than one per cent of that information was adequately processed. In other words, will the legislation in fact achieve the goal that it is intended to achieve? That is the first question you must ask. The second question is: will it be introduced at a price that is too high for the community in previously well-established rights? The final question is: where is the clear proof? The mere existence of an ongoing offence is not that clear proof. Where is the proof that the existing investigative powers are not effective? Is it a resourcing question? What is it? What we need is clear evidence of these issues being necessary to be introduced. The mere fact that legislation is introduced offshore does not give it a seal of approval in Australia. There is plenty of evidence of that. For example, in England they tried to introduce detention power in the terrorism legislation that was far too long. The mere fact that they try and do it there does not mean that we should do it here, particularly when the informed commentators in England say that it is not good.

Mr HAYES—I accept that, and I think it is probably correct. I am simply indicating that we probably are not Robinson Crusoe when dealing with the development of serious and organised crime presently. I have one final question. Having regard to the issue of crime prevention and deterring participation in crime, what would the Law Council's position be with respect to unified or consistent unexplained wealth legislation?

Mr Ray—That is, in effect, a reverse onus allegation. We would say that that gives rise to genuine concern. The existing confiscation legislation is already quite strong.

Mr HAYES—That is for proceeds of crime. What I am talking about is unexplained wealth as it applies, to an extent, in Western Australia and more recently in the Northern Territory. As a deterrent to participation in crime, understanding that there are civil liberty aspects to it—

Mr Ray—There are.

Mr HAYES—If you are asked to explain you either explain or you do not explain, but is it fair that if you cannot explain you forfeit the assets?

Mr Ray—It is not only if you cannot; it is if you choose not to. You may choose not to for a range of reasons. I would like to take that question on notice, if you do not mind.

Mr HAYES—Sure.

Mr Ray—My immediate response is this. Say that, on normal principles, you have a reason to investigate Ross Ray and in the course of that investigation you have a suspicion that I have been involved in organised crime. You know that my income is X per year, through your general investigations. You know that my asset base might be a thousand times X. If, from your normal, proper investigations and association with people who are involved in organised crime or people who may have been involved in a significant incident, I have unexplained wealth but there is a prima face a case against me, I have no difficulties with the circumstance that you raised applying there. But what I do not like—

Mr HAYES—Not a prima facie case. If you are in a position where you cannot justify your wealth in terms of your earnings and are under investigation without having a charge raised against you, if you fail to comply, should that be something that would be of assistance in pursuing serious and organised crime in this country? You indicated that you wanted to take that on notice. I am happy for you to do that.

Mr Ray—I will. It is interesting that, for example, guidelines created for the legal profession in the money-laundering legislation would indicate that when looking at your client there are high- and low-risk people and high- and low-risk transactions that you may deal with. If you deal with people who, for example, create a legal person through a trust structure and it is difficult to determine the true beneficial owner and there is doubt about that circumstance or they have significant unexplained wealth, then you to get to a higher risk where it increases the onus on you as a professional to make the inquiry. Or you might have what is referred to as a PEP, a politically exposed person, someone from a foreign poorly regulated country who arrives in your country with a very high level of unexplained wealth. There are examples of that worldwide. That would set off alarm bells in most normal people and would cause professionals to make inquiries. It may cause regulators to commence an investigation. Whether it should cause that person to forfeit the asset is a completely different issue. It is one thing to say that it is an appropriate investigative trigger. That is fine. But it is a matter of concern that, effectively on a reverse onus, we are suspicious. The attitude is: 'You disprove it. If you don't disprove it, I'm taking that asset from you.' That is immediately a concept that I am not happy with, I must say. But we will provide you with a further response in due course.

It is interesting—the existing confiscation of profit legislation has within it the option of effectively seizing assets, even when there is no criminal prosecution. There are many people who view that step as too strong in any event, but it exists. There is also a presumption that if you are involved with a serious offence—that is, involving an amount in excess of $10,000—then the legislation provides for, in effect, a reverse onus whereby the onus falls upon you as the person charged or involved to prove that the assets that you have are legally and legitimately acquired. That is very strong legislation, and I query the need to go beyond it. One can imagine what might happen were we to have the criminal cartel conduct that has just been spoken of by the government, where, historically, we know Mr Pratt accepted a civil penalty. If we put that into the criminal setting—and, indeed, it could apply even in the civil setting—a serious offence involving more than $10,000 with a reverse onus presumption that the assets of that particular company are ill gotten gains. It is very strong legislation, and I query the need to go beyond it.

Mr HAYES—Thank you.

Ms LEY—Thank you for your submission. I wonder if you could comment frankly on your views on the performance and culture of policing within our law enforcement agencies.

Mr Ray—I am happy to do that. I think the police, properly resourced, do a terrific job. I make it clear that a great deal of my work as a junior barrister was involved in the prosecution of criminal offences in Victoria. I did back-to-back murder trials in the state for some years, so I have been involved in many criminal cases, both as a prosecutor and as defence counsel. I generally have a high regard for members of the police force. I was also involved in a major investigation into police corruption in Victoria, and I am aware that there are some police officers who take advantage of opportunistic circumstances, but they are very much in the minority. I believe that police powers are appropriately made available to them.

I have a very strong view that broader powers and coercive powers should be the subject of judicial oversight. I think it is very important to have that judicial oversight. For example, at the crime commission level, no matter how effective and how good police officers are, they are a product of their environment and they are a product of the work they have done over 30 years. To have a judicial oversight of coercive powers is an appropriate safeguard. To have, for example, a committee of chief commissioners exercising the discretionary oversight to declare a case as one appropriate for coercive powers, to me, is not an adequate safeguard. I think there is a danger that, as I am a product of being a criminal barrister and a barrister involved in the regulation not only of the community but also of companies for many years, I am a product of that level of knowledge. So too are commissioners. I would prefer that a panel of commissioners sitting as a committee were not the deciding body for the declaration of an appropriate criminal investigation that warrants coercive powers. That is an old-style traditional view, I suppose, but it is important.

Ms LEY—You have commented in your submission on the enhanced investigative powers—you are presumably concerned that this trend is going to keep going—and your concern that the ability of the justice system may be compromised. Can you just expand on that little bit further?

Mr Ray—I am not sure about the setting in which you raise that, but I can give you an example. With the terrorism legislation that is now the subject of that close inquiry by Mr Clarke in the investigation into Dr Haneef's conduct, you have clearly legislation that limits the amount

of time that a person can be kept in custody, and within that legislation there is the capacity to declare dead time. There is no limit on how long that is. At the moment, that declaration can be made by a justice of the peace, and it can be made in circumstances where the person being investigated is not represented or, if they are represented, that person is not made aware of the Crown case, so there is not the capacity to test that out. It was very much the Law Council's position that that should be the subject of senior judicial review—and, when I say 'review', I mean oversight for the decision, not a subsequent appeal. The reason is that the community is entitled to have these offences properly investigated. Because the origin of the threat may be offshore, there is recognition of the need to investigate and, because of time differences, build in a leeway for the investigative officers to say, 'I'm not going to get an answer on that until midday tomorrow,' or, 'I can't do it within that time.'

So it is sensible to have some flexibility, but the Law Council wants that flexibility to be subject to judicial oversight because it introduces a degree of objective integrity to the process. Without that, we know—and it may be inappropriate to comment too strongly, because the Clarke inquiry has not handed down its findings—that the conduct of the prosecution and the interpretation of that provision by the police, by the DPP and perhaps by a low-level judicial officer such as a JP or ultimately a magistrate have created a questionable detention of a person. Therefore, that is a very good example of the need to respond to independent judicial oversight to improve scrutiny and to improve, if you like, even protection of the police involved in the investigation, because making it subject to that oversight not only protects the individual being investigated but protects the integrity of the investigative body, such as the Federal Police. They are subject to accountability. They know that, so they produce appropriate material that is subject to scrutiny and is approved. That becomes a wholesome, transparent process.

Ms LEY—That was a good way of answering it. Thank you. Finally, and you have touched on this, what are your views on the oversight required and your views on the coercive investigative powers of the ACC?

Mr Ray—I think I have shared that view. In the current climate, it is understandable that some investigative bodies and people such as the Federal Police have a degree of knowledge that sometimes taints their independent judgement. I do not criticise them for that because they have a high level of knowledge about conduct in the community that many others do not have. That makes them very effective investigators but may, from time to time, taint the capacity to make an independent judgement about the interpretation of legislation and, for example, the exercise of discretion. If you have the exercise of discretion and a decision about the introduction of coercive powers, it is my view that such an exercise of discretion should be the subject of independent judicial scrutiny, when it is such an important component of investigation.

Going back to basics, we all know that before police had to audiotape and, in some significant crimes, videotape records of interview there was a degree of lack of accountability. A lovely quote was produced to me when I was prosecuting a case. As a young barrister, I said to the investigating officer, 'It's a shame we don't have any admissions in this case.' The response was, 'Oh, Mr Ray, did I forget to tell you about this?' This police officer said, 'When I brought this person back from Queensland he had a conversation with me in the aircraft,' and out came a very clear admission in circumstances where, had it been an admission, I would have expected it to have been in the original brief. It had a number of wonderful sugar-coatings in it. Mr X, the police officer, was told, 'A lot of poor people got a lot of benefit out of what I did,' so it had the

Ned Kelly component in it as well. That sort of naughtiness and also the offender's wrongful allegations about the police misconduct, as in 'I was bashed to make the confession,' were all sanitised because of the introduction of oversight and scrutiny through the recording of interviews.

In the same way, investigative powers give police great, great power and great influence. It is very important that they utilise that properly and fairly, and invariably they do. But one of the reasons they do is that it is subject to scrutiny and subject, in due course in a case, to, 'I'm going to be cross-examined about this.' People do need to be accountable, and the best way of having accountability is independent judicial oversight.

Ms LEY—Thank you.

CHAIR—Thank you very much, Mr Ray and your officers, for coming along this afternoon. We look forward to hearing from you with those documents and on those questions on notice. Thank you.

Mr Ray—We are happy to help you in any way we can. If you find in due course that you have any further queries that you would like to raise with us that you think the legal profession of Australia can assist you with, we will be very happy to assist you. In issues such as this, we do speak as the national voice of the profession, and we are very happy to help you.

CHAIR—Thank you.

[1.57 pm]

ANGUS, Ms Laura, Director, Strategic Policy Section, Compliance and Integrity Policy Branch, Compliance and Case Resolution Division, Department of Immigration and Citizenship

FREW, Mr Todd, First Assistant Secretary, Border Security Division, Department of Immigration and Citizenship

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

Mr Frew—I have no opening statement. I am here at your request, obviously in an endeavour to answer all of your questions. You would understand that Immigration is a very large organisation. It might be that for some areas of your questioning I might have to take questions on notice, but, that notwithstanding, I will do my best.

CHAIR—Thank you, Mr Frew.

Ms LEY—We appreciate your coming before the committee today. How successful do you think we are, and can you comment on the factors affecting that success, in keeping the elements associated with serious and organised crime out of the country?

Mr Frew—I will perhaps give a general comment about border measures first and then turn to the specific issue. Last year, nearly 12 million people entered Australia. About 7.1 million of those people were not Australian passport holders. The successes of the border measures and indeed the visa integrity I think are matters of substantial record. For example, in the area of visa integrity, for the sake of discussion, the public figures indicate that there are about 48,000 visa overstayers out of seven-odd million visaed people. That is an extraordinary success rate and compares favourably to other developed economies with the same kind of border management arrangements.

In respect of the specifics around organised crime et cetera, the universal visa system that underpins the requirements for entry to Australia means that every visa applicant is tested against our central movement alert list, which is a single whole-of-government alert list that contains more than 600,000 individual records and more than two million documents of concern. Contained in the alert list are concerns raised by other national security agencies, by law enforcement agencies et cetera. The fact that every individual is checked against that alert list at the time of visa application and subsequently on the way through the process is a measure that is largely without equal in border systems throughout the developed world. Many other countries have a range of different warning lists that are separate and are checked on different occasions.

A large number of visas are refused in a given year for a wide range of reasons. Contained within those refusals would be some refused on character grounds. When I say a large number, I add that it is a small number as a proportion of all visa applicants. Without talking about

specifics of individual cases, the overall structure of checking and continual checking leaves us, I think, in reasonably good shape. Is there some greater specificity that you are seeking?

Ms LEY—Is there any planning or mapping or—it is a bit hard to do, I know—are there any estimates made of how many people are not being caught by that process, given that we do have elements within the country many of whom have come from overseas sometime over the last 20 years?

Mr Frew—The immigration department is the owner of the issues around entry and, to an extent, exit. As to who may have a visa and who may not—again, we are, under the Migration Act, the deliverer of that particular outcome. If persons are of concern to the department, either because they are of concern to someone else or, indeed, because we have come across information ourselves in some way, then there are legislative measures available to us to either prevent the entry of the person or remove the person subsequently. If the question is: does Immigration map the organised crime entities in Australia and assess them against the Migration Act, I think the answer to that is no. It is not our job to map organised crime in the way that I think you are proposing.

CHAIR—What about student visas? You would have seen the article in last week's *Daily Telegraph*, 'Asian gangs Yee Tong, Sing Wah recruit Western Sydney teens'. One of the questions posed in that article is: 'Do student visa rules need to be tightened?' It is not only about this example; there is also the issue of Columbia. Columbia sends 4,000 students here a year. Senator Polley and I were in Columbia. We spoke to the federal police there, who mentioned that a number of these students may just be drug mules. Is that an issue that we should be looking at? Should we be looking at student visas from China—not just for the gangs but also, say, for the prostitution—and from Columbia?

Mr Frew—I guess I have to revert in part to something I said earlier and then come back at it. There are a range of criteria that apply to applicants for visas of particular classes. Depending on a range of circumstances, they may be subjected to character checking; they may be subjected to additional security checking et cetera. These are, by and large, publicly available criteria. Some of the national security information is, obviously, not in the public domain. If you were to take, for example, that particular article about the student arrangements, the criteria for students, given that they are going to be here for an extended period of time, entail requirements in connection with health. I think there are also requirements in connection with character checking if someone is here for that length of time. That is to say that they have to demonstrate to the decision maker that they do not have any criminal convictions et cetera.

The risk that we and other border agencies all around the world face is whether or not people are withholding documentation or providing documentation that is inaccurate. Without specific concerns about individuals in that particular group, upon which we will do some research, it is difficult for me to answer a general question. If there was a concern about Columbian students, for the sake of discussion—and I said at the outset it may be that I do not know the answer to all of the component parts—by virtue of the length of their study in Australia, they would be required to provide evidence of no criminal record, as a part of the process. Without that evidence the visa would not be granted. If we are dealing in the areas where there are concerns about people who have no convictions, that is an entirely different issue and set of circumstances.

Finally, I will just point out that the overseas student market contributes very substantially to the Australian economy and it is one of the largest exports of services income streams. The numbers of students in Australia at any given time are large; it would exceed 100,000, but I am not sure that I could give you a more specific figure. Within a very large cohort of any group of people, whether it is student visa holders or AFL players, there will be, from time to time, problems with individuals.

Ms LEY—Just to continue on this point, do you see any changes happening to the migration act, or would you like to, that might restrict entry of people likely to be involved in offences? I know that that seems to be drawing a very long bow, but there are parts of the world from which you cannot get visas to come to Australia because of your likelihood to abscond when you get here, so there is a bit of a precedent. It seems that if we can take measures at our borders to prevent from entering those people who then become very difficult to deal with, we should.

Mr Frew—There is a fine balance in which we are engaged every day between facilitation of the large numbers of genuine travellers and the prevention of the entry of people who would do harm in some way, whether it is the integrity of the migration program or whatever. Where the balance is drawn changes from time to time in certain ways. For example, since September 11 all countries' border measures have tightened up in particular areas in response to a changing risk environment. I do not think it would be appropriate for what I think should occur in respect of government policy. That is not for me to answer. But I think that successive governments have demonstrated a capacity to look at changing risk issues, insofar as the immigration department has a capacity to deal with it, and through legislative and/or business or other means, shift things around. But the facilitation between the overwhelming majority of genuine travellers who do the country good in some way or another has got to be a clear consideration in dealing with the stuff at the edges.

Senator POLLEY—We have had extensive discussions with the Federal Police in relation to Colombia. There will now be direct flights from Chile to Australia. Law enforcement are aware of the implications that that could contribute to growth in muling drugs into the country. Is that something the department should be looking at in terms of ensuring that all the checks and balances are done?

Mr Frew—Yes. If I may repeat something I said earlier: the department administers a visa regime and, if there are issues of security or criminality or whatever, we take advice from other agencies in that respect. Did you say there have been direct flights from Chile?

CHAIR—I think the senator meant that there is going to be direct Qantas flights from Argentina.

Senator POLLEY—Yes.

Mr Frew—There have been direct flights from Buenos Aires before. Both Aerolineas and, I think, Qantas did it at one stage, and we now have direct flights from Santiago. I think that is the only other South American port. There are a range of measures in place which go to immigration and border security pure and simple, which is to say that all people getting on board an aircraft, wherever it happens to be hailing from, go through a process at the point of check-in that determines whether or not we have evidence of having granted them a visa. If there is no

evidence of them having a visa then they are not permitted to board the flight until the issue is rectified. If they cannot get a visa at that time then they will not get on that flight. I keep going back to the visa process because it is the visa process that brings about the MAL, or movement alert list, checking, which is where we find if someone is of direct concern to us. Direct flights from new countries is something we deal with quite frequently. If there is an increased risk according to the AFP in connection with drug-muling then I imagine that the AFP and/or customs would be looking at it in that particular respect. The way that Immigration looks at it is from people who represent a threat to border security, the integrity of the program et cetera.

Senator POLLEY—Do you think the legislation is stringent enough in terms of your department's role in protecting Australians from organised and serious crime?

Mr Frew—Again, I am not sure if it is appropriate for me to give a personal view. I would point to the fact that, as well as the balance between facilitation and control, we are also engaged in the balance of fair decision making. We have, as I am sure the committee would know, reams of legislation that drive our actions in that regard. Indeed, many of our decisions are tested before courts. From time to time, that has an impact on the way that our processes work. Again, I am sorry, but I do not believe that I can give a personal view, other than to say that there are mature processes that have been around for a long time to help us deal with people of bad character, security concern or threat to the integrity of the immigration program.

Senator POLLEY—We have heard evidence in relation to the increase in internet fraud and identity theft. What challenges does that present to the department? If you can, please give some examples in your answer.

Mr Frew—Identity theft presents challenges to all government and indeed to the private sector. Australia, like a number of other countries in the area of border management—and I must keep confining myself to that—has for a number of years been looking at that under the theme of a project named biometrics at the border. Immigration, customs, the Department of Foreign Affairs and Trade and the Attorney-General's Department some number of years ago now were provided with funding to look at the insertion of biometrics more systematically into the travel process. For the department of foreign affairs, this resulted in them producing the now biometrically enabled e-passport that Australians are using in great numbers. For customs, it involved the installation of an automated border processing kiosk called SmartGate, which is the thing that can read the electronic passport. In Immigration we had to do a fair bit of under the surface work in connection with our many systems to create an environment in which we could start using biometrics more effectively. We are using biometrics now in Immigration specifically in a limited number of ways, but it is our intent over time to expand the use of biometrics into the visa process. Why would we do that? Because biometric identifiers are more secure than just data and we, like many agencies, rely heavily on data. We are also conscious of the fact that countries like the United States, Japan and the United Kingdom and soon the EU are going to be interposing biometrics into their travel processes to a higher level. Clearly it is appropriate for Australia not to lose pace in that arrangement. So we are doing much work not only within Immigration but across government to get greater security in the travel environment using biometrics.

Senator POLLEY—Thank you.

CHAIR—Is there sharing of reciprocal information between countries—say, between us and China? With regard to a person making an application to come to Australia, do we get full cooperation from other countries or is there an A, B and C level, and does that determine whether you get the visa?

Mr Frew—Let me try this and see if it goes any way to answering your question. The visa transaction is between the individual and the Australian government. From time to time, it is a requirement that the individual will have to produce documentation which originates in the host government. They may have to produce employment references or letters of good character or something or other. In each and every case, can we be confident that that is genuinely supplied documentation by the host government? I guess the answer to that is no. However, we have a range of specially trained officers. We have a significant investment in document examination, both labs and officers, whose job it is to try and find out when this is not going correctly. So in the countries that you might expect documentation is perceived to be of the highest level of integrity and in the countries that you might expect some documentation is not.

In terms of information sharing, there are, again, privacy and other legislative strictures on what we may do in talking about a visa applicant to another party. It would not be a matter of common occurrence where we might go to, say, a host government and say: 'This visa applicant has given me this bunch of information. What do you think?' There are, however, accepted protocols in terms of information sharing in limited circumstances. I would think it would be fair to say that wherever those opportunities are necessary to be availed of, we would be involved in that.

CHAIR—Thank you.

Mr WOOD—You mentioned biometrics. What type of biometrics? Is it fingerprints or iris scans, or are we up to facial recognition?

Mr Frew—The current biometrically enabled Australian passport operates on the facial biometric, as does the SmartGate automated clearance kiosk that I described which is currently at Cairns, Brisbane and Melbourne airports and is being rolled out more progressively. You would do best to speak in more detail to colleagues in the Department of Foreign Affairs and Trade, but I know that the fingerprint biometric is not currently contained in the passport chip and I do not know if there is a proposition that that would occur.

Mr WOOD—What constitutes bad character? If you had, for example, someone who in an outlaw motorcycle gang in, say, America who wanted to come to this country, do you have means of detecting that person? If you did, would you actually stop them on bad character for being associated with the motorcycle gang?

Mr Frew—They are simple questions and I will provide complicated answers.

Mr WOOD—I thought you might.

Mr Frew—The definition of bad character—and I was using the term loosely, just as a couple of English words—

CHAIR—I hope none of us fall into that category.

Mr Frew—I would be absolutely certain of that.

Mr WOOD—Certain that they would or certain they would not?

CHAIR—I am not sure about the Liberals, but I know we would.

Mr Frew—There is nothing I can say after that. If you contemplate the term 'bad character', can I give it to you in this sense. We deal with visa applications of many kinds. We deal with short-term visitors. We deal with people who want to transact through. We deal with people who want to stay here and settle permanently. The nature of a person's offences, if any, has to be measured in the context of the decision that you are making. Without putting to fine a point on it, if someone is coming here for a short time for a holiday and it is no substantial gain, apart from the economics, to Australia, and they have a conviction of a relatively small sort, I guess, with a small time of imprisonment, that might be a case that on balance the risk to Australia is not outweighed by the reason for the travel so that might be refused.

The same conviction that is being considered in the context of a person who has been here for many years, who wants to stay and has children here et cetera might take on a different characteristic. There are provisions in legislation; there is not an objective decision maker who is just applying a rule of thumb. But, with few exceptions, there is no statement that if the conviction is 'this' then it is in or out, if you take the point.

In connection with an outlawed motorcycle gang and the position you described where the chap is coming from America, if he were coming for, say, a visit to Australia and was being assessed for a visitors visa, arguably there would be issues to do with him applying for an electronic travel authority and therefore not having a human involved in the decision-making. I will come back to that. If the person were being considered in all of the circumstances, it was a short-term visit, there was no great benefit in the visa being granted and we were a bit concerned about whether this person was a genuine and bona fide tourist—as the legislation might describe—the visa might be refused just on the basis of the fact that he is not a genuine and bona fide tourist. The decision maker might not have to turn his or her mind to the more complicated elements of association.

If the person appeared in every other way to be a genuine tourist—that may be surprising, but if it happened—there is provision in migration legislation for a person to be refused in limited circumstances where there is an association test as part of section 501 which is, broadly speaking, a character test. If we need to go into the detail of that, I will ask Ms Angus to help me out. One of the issues about the way our border management processes work now is that a percentage of applicants travelling to Australia do so on an electronic visa of some kind. On that basis, there may not be a physical transaction. There may only be a limited amount of information available until they arrive at the border.

Mr WOOD—How would you actually find out? For example, did the American authorities warn Australia immigration, or the immigration contacts, and say 'You have got a member of a bikie gang coming over. We have got no reason to know if he is coming over for tourism or—

Mr Frew—In the way of the world, our movement alert lists are terrific at identifying things that we know about.

Mr WOOD—Yes.

Mr Frew—There is an amount of work that we do that I would not want to speak too broadly about in an open forum—

Mr WOOD—Yes, I understand.

Mr Frew—in which we analyse information and come to certain conclusions that identify people who are not on the movement alert list. We do this in conjunction with some of the other agencies as well as independently. If the case that you have described is on our movement alert list, we would do certain things. If he is not on the movement alert list and he turns up at the border—in my experience it is not unusual for people to turn up at the border wearing their colours, which kind of gives them away—that is handy because then we can intervene. If there are issues that bring people into the legislative room, we might cancel their visa and turn them around—that might happen.

Mr WOOD—Would you actually stop a person if you were aware he was a member of an outlawed motorcycle gang? Would that be sufficient? The reason I ask is that you have spoken about holidays, but we are hearing today and on other days how outlaw motorcycle gangs are international and there is movement of drugs from various countries into Australia.

CHAIR—Training!

Mr WOOD—Yes. So what is the position regarding an outlawed motorcycle gang member, or any gang member, coming to the country?

Mr Frew—As I just described a moment ago, there is provision in the legislation for us to cancel visas or refuse to grant visas in certain circumstances.

Mr WOOD—So it is not a blanket automatic ban—that is what I am trying to find out?

Mr Frew—No, it is not an automatic ban.

Mr WOOD—But is it a reverse onus where they have to prove their goodwill to come into the country?

Mr Frew—Before we would exercise the decision we would have to be satisfied that the legislative requirements of association were met. The risk of employing that kind of legislation without careful consideration in each case is quite high.

Mr WOOD—Is it possible to give us, on notice, some examples or what the legislation states so that we can be aware of what the criteria are, or is it like some magical science which you cannot really—

Mr Frew—We can absolutely give you what the legislation states, and I have prepared a very short history that I may even read into the record if that would suit you. Section 501 is the section of the current Migration Act. The original version was inserted into the Migration Act by a different section name in 1992. Prior to that, removal of persons involved in criminal conduct relied on provisions in the act for the deportation of aliens convicted of criminal offences.

The 1992 amendments conferred a cancellation power on the minister if the minister was satisfied that the person was not of good character, having regard to the person's criminal conduct or because of the person's association with another person or group who the minister reasonably believed had been involved in criminal conduct. Section 501 was repealed and replaced by the section in its present form in 1998, with further amendments coming into force in June 1999. The amendments introduced the character test in a more absolute form, in particular by providing that a person automatically fails the character test if he or she has a substantial criminal record. The association ground of the character test was retained, albeit in a modified form. From that you can draw that since 1992 there has been legislative provision to enable us to deal with association.

Mr WOOD—Thank you.

CHAIR—That would get a bikie club but not a book club on that definition, I suppose?

Mr Frew—We did a little research before we came today and the association component of section 501 is not used all that frequently.

Ms LEY—Why is that?

Mr Frew—I guess because cases where it is necessary to go in that direction have not presented themselves to decision makers.

CHAIR—We may have some questions that we will send off to you that we have not covered here today, otherwise thank you very much Mr Frew and Ms Angus for coming this afternoon.

Mr Frew—Thank you.

Proceedings suspended from 2.27 pm to 2.37 pm

BARLOW, Mr Chris, Assistant Deputy Commissioner, Serious Non-Compliance, Australian Taxation Office

CRANSTON, Mr Michael, Deputy Commissioner, Serious Non-Compliance, Australian Taxation Office

ZDJELAR, Mr Peter, Assistant Commissioner, Serious Non-Compliance, Australian Taxation Office

CHAIR—I welcome representatives from the Australian Taxation Office. I invite you to make a brief opening statement if you would like to, which will be followed by questions from the committee.

Mr Cranston—I would like to thank the committee for the opportunity to attend today. We last appeared before this committee in July 2007, and since then there have been further developments in how we work with other agencies to combat serious and organised crime. We work not only at the Australian government and state levels but also with other international revenue agencies. By way of context, I would like to make some opening comments and provide the committee with a bit of an overview on the tax office's role in dealing with serious and organised crime. We have not provided a written submission.

The tax office deals with serious abuse of the tax and superannuation systems by using a range of powers and resources. Our primary role is the administration of the tax system, but to ensure the integrity of the tax system the tax office works closely with law enforcement agencies in a multifaceted approach. Specific focus areas in dealing with serious and organised crime include, firstly, refund fraud, where we see coordinated attempts at fraud using high volumes of low-value transactions. This fraud is perpetrated through fraudulent registrations using forged and stolen identities. Secondly, we work closely with other law enforcement agencies, including the ACC, in emerging high risk areas ensuring that organised groups that accumulate wealth from illegal activities are paying their appropriate taxes. Accumulated wealth is being invested in the financial systems in Australia and overseas, the stock market and legitimate businesses. There are system and commercial reasons that explain some of these transactions; however the use of tax havens to conceal asset ownership and income is a threat to the integrity of Australia's financial system, both the tax and corporate regulatory frameworks. Project Wickenby is one of our strategies to address this risk to Australia.

Finally, there are other general compliance programs across all our markets, including small business and individuals. We conduct audits on some legitimate businesses that may be funded by some organised criminal activity.

The tax office has a suite of powers at its disposal under the various acts we administer. This was enhanced with a relatively newly acquired power in April 2007 to enhance information sharing—section 3G in connection with the Wickenby task force. In the year ending 30 June 2008 the tax office made 133 disclosures of information acquired under taxation law to Wickenby agencies for the purpose of this task force. The Project Wickenby task force has enabled the agencies involved to deal with very complex structures and arrangements across

borders. The Wickenby task force approach is proving effective in tackling abusive use of tax havens. This approach is equally effective in dealing with organised crime groups that have similar complex business models and arrangements.

CHAIR—What difficulties, if any, do you face in investigating and prosecuting incidents of money laundering and tax fraud?

Mr Cranston—The difficulties—

CHAIR—If any.

Mr Cranston—It is a very broad question.

CHAIR—I do not know whether you want to take that on notice and reply to us in writing? It is up to you.

Mr Cranston—I think we will take it on notice, but I could offer that where difficulties could arise it very much depends on the factual situation. In some of our work that we do under Project Wickenby getting access to information has been problematic. In relation to other investigation work, like I spoke about in refund fraud, sometimes identifying the perpetrator of a particular attack can be difficult in an investigation. They are some examples of the difficulties in getting the evidence to a position where the Commonwealth Director of Public Prosecutions can take it further into the courts.

Mr Barlow—Two things come to my mind. One is getting information from offshore jurisdictions. That is a particular concern for us—not only the process, but the timing of that and the extended time that it takes. One of the particular issues that we face in refund fraud investigations at the moment is abuse of identity. Identity crime is quite a difficult crime to investigate.

CHAIR—Thank you.

Mr WOOD—You mentioned in your opening statement that $16 billion each year leaves our shores illegally. Is that from serious and organised crime or is that just from crime in general—tax evasion, or what?

Mr Cranston—I did not say it leaves illegally. It is just the disclosure through AUSTRAC of financial flows of funds that lead offshore to tax havens. It provides us with an indicator because of our experience in dealing with the use of tax havens. We have seen abusive use of tax havens.

Mr WOOD—Yes.

Mr Cranston—Not in all cases—there are often a lot of commercial explanations for moneys that move in various financial markets into the tax havens. Private equity funds and hedge funds have used tax havens at the large end of town.

Mr WOOD—'Tax haven' does not necessarily mean it is illegal—is that what you are saying?

Mr Cranston—That is right, exactly. We are saying the abusive use to conceal assets and income is where you are starting to head towards that illegal territory.

Mr WOOD—What percentage out of that $16 billion is tax avoidance or used in serious and organised crime? Would you have any figures on that?

Mr Cranston—It is extremely difficult to be able to unpack a particular flow. You might be able to show that 80 per cent or 70 per cent could be something that is more in that sort of large business commerciality, but if you look at it it is quite a sizeable flow of funds. Using Wickenby as an example, $200 million of moneys in that flow is very hard to identify when you are looking at $18 billion.

Mr WOOD—I suppose the point is that, even if your figures are 70 per cent commercial or legitimate use, as I think you said, maybe $5 billion or more would be unexplained. What recommendations can you make to the committee to prevent people illegally using tax havens? At the end of the day, we have to put a report in with recommendations. What is your recommendation to this committee to prevent this from happening? Do you need extra legislative powers or resources? What do you require?

CHAIR—Do you need coercive powers at the Taxation Office rather than going through the ACC?

Mr Cranston—I think that you can answer that at a number of levels. The first answer to that is that it is not just an Australian problem; this is a global problem with tax havens, and we are working closely with the OECD to get information exchange agreements in place, which will enable us to have this particular information that we find necessary disclosed to us. We have negotiated four taxation information exchange agreements, and there is global pressure for other tax haven jurisdictions to also go down that path and enter agreements with countries. We are very proactive in that area. At one level, that can help us get the necessary information for civil work. The ATO's role is in relation to civil work, so when you are asking about coercive powers we would say that we do have formal powers to access information for civil purposes.

Mr WOOD—So what recommendations would you make? At this stage are you saying you need other countries to assist? At the end of the day, we are trying to put a report together with recommendations. The chair asks you questions about coercive powers. Are you saying you do not need coercive powers at this stage? Are there any powers you do need or any legislative changes you require to assist? Our job is to do everything we can to stop serious and organised crime, and one of the things is obviously the transfer of money and/or avoiding tax.

Mr Cranston—I think it is a matter for government in relation to what powers are necessary, but in relation to the civil matters that we deal with, as I said before, we are entering into those exchange agreements. One way of making tax havens do that that the government has explored is preventative measures. For example, around managed investment funds, non-residents must have an exchange agreement with us to get access to a reduced withholding tax regime. That builds into the Australian tax system an incentive for tax havens or residents of tax havens to have exchange agreements with us. So that is one of those preventative measures that the government is exploring.

Mr WOOD—Okay. I am not getting anywhere. Thank you.

CHAIR—On that, and following a bit of Mr Wood's questioning, our inquiry is into serious and organised crime. I would not put Glenn Wheatley in the same category as Tony Mokbel. What information can you give us that there is significant involvement in these tax havens by criminal figures in this country who are involved in drugs and other sorts of criminal activities? I think you may have said you are not particularly sure, but is that an area that criminal figures are getting involved in?

Mr Cranston—Working with other agencies, we have looked at particular structures and businesses of organised crime groups. Some of the intelligence through that, although very early, has identified that some of those groups do use tax havens. There are flows of funds that move to tax havens. In some ways, Senator, on the first part of your question around whether Mr Wheatley is serious enough to be organised crime, our view is that under some of the tax haven abuse, and especially under Project Wickenby, we do see organised promotion of offshore tax schemes, very well organised with connections in this country from offshore promoters to what we call secondary promoters operating as accountants in this country. The ease of being able to be involved in tax planning of this nature really concerned the Commonwealth and the commissioner at the time, and that is why there has been a very strong focus in this area.

Mr Barlow—If I could just add to that: I guess over many years there has been ample evidence of organised crime groups using tax havens. The sorts of things that attract tax avoiders or evaders to tax havens are the same things that attract organised crime figures, which are that anonymity and ability to disguise both flows of funds and assets, so the things that are attractive to both groups bring them together. And then you have the facilitators of the use of havens acting on behalf of both those groups, so quite often you will find that, in an operation to deal with a particular tax haven or a particular promoter, you will come across instances of tax fraud and also instances of money laundering of the more traditional—I guess you might say—organised crime groups which are dealing with drugs and people trafficking and those sorts of things. So there are quite some advantages in having a strategy that deals with the broad range of those risks through a joint operation. I think that the way the ACC works in bringing a task force together, with agencies perhaps having a slightly different focus in their home agency but bringing together all of those different perspectives in a task force approach, was the strength of the previous National Crime Authority and now is the strength of the Australian Crime Commission.

CHAIR—You may be able to clear me up on this, but I am not aware that any of the people who have been charged or convicted in Wickenby would have been for the purposes of the definition of serious and organised crime in the ACC Act. They would not qualify as being serious and organised criminals. Would that be right, or am I wrong in that?

Mr Barlow—My understanding is that the way the Australian Crime Commission Act is structured is that really a serious organised crime is around a range of predicate offences, and tax fraud or fraud on the Commonwealth is one of those offences, as are drug dealing, firearms and people trafficking—quite a wide range of predicate offences. Then 'organised' is really two or more persons and some degrees of complexity or planning, and those are very much the indicia of tax fraud in the sorts of cases that we are talking about. There is a lot of collusion, a lot of secrecy, and it takes the sorts of powers that the Crime Commission has and that sort of multi-

agency task force to be able to crack that nut, given the complexity and the degree of planning and tactics that are used to hide what is truly going on.

CHAIR—Fair enough.

Mr HAYES—Can you let us know whether the ATO has any involvement in the recovery of proceeds of crime and, if so, what is the role of the ATO in that?

Mr Cranston—In 2006, we became an enforcement agency that can use those powers. We have not authorised the officers and we have not commenced the use of those powers at this particular stage. We actually looked at the proceeds of crime as secondary to our primary role of administering the taxation laws. It does serve as something that can help us, especially in relation to collecting potential tax debts.

In relation to other work that we do, we work very closely with the AFP and the ACC on criminal investigations. Even in our own investigations, we have been supported by those agencies in proceeds-of-crime investigations. We may provide technical assistance to those investigations that they conduct. Last year $18 million was restrained, as an example of some of that work with the Australian Federal Police.

Mr HAYES—Having regard to that, I understand that if you use this provision you have to first establish that the funds in question were actually gained through illegal activity. Is that right?

Mr Barlow—There are various ways in which you can confiscate assets under the proceeds of crime legislation. It is all linked to proving the commission of an offence—a predicate offence, again. There is the old scheme back from 1987 which is based on the successful conviction of a person for that offence. There is now a civil based regime where you only have to prove the offence to the balance of probabilities. And then there are a range of ways in which you look at what the benefit was that the person got from the offences that they committed. For instance, there is tainted property, property that was used in the commission of the offence. That is forfeitable. There are also ways to get, say, a pecuniary penalty order, which is quite often used in a tax context. You quantify the benefit that the person got from the commission of the offence and then you get a pecuniary penalty order. There are other ways that the act applies to confiscating all of the assets in very serious offences, perhaps—all of the assets in those circumstances where a person cannot prove that they legitimately—

Mr HAYES—But this is subject to the charge and conviction, isn't it?

Mr Barlow—That one is subject to conviction, yes.

Mr HAYES—In terms of your liaison with the AFP and other enforcement agencies, specifically on serious and organised crime, do you see that there would be any material benefit from having uniform or consistent unexplained-wealth legislation in this country?

Mr Barlow—By that do you mean within the proceeds of crime regime, a similar approach to Western Australia?

Mr HAYES—Not subject to the precursor offence; in the process of investigations. What I have in mind is probably more what is now operative in the Northern Territory, which is a second generation of what occurred in Western Australia.

Mr Barlow—Certainly, again, I think we would say that it is a matter for government as to whether that is an appropriate tool.

Mr HAYES—Ultimately, it is a matter for government, but, your organisation being a partner in this investigative aspect out there that is protecting the community against serious and organised crime, would this be seen as a material advantage to those charged with those investigations?

Mr Barlow—From a practical perspective, we obviously do deal with unexplained wealth. That is a basis of some of our assessments. We would raise assessments on particular taxpayers on the basis that they cannot explain where their wealth has come from. That is a process which involves doing the investigation, raising an assessment and then collection after that litigation. It all takes a lot of time. As I understand it, if you had an unexplained-wealth regime within a proceeds structure then you would have the ability to have restraining orders at the start, which would secure assets, so I can see that in that sense there would be a way of securing those assets upfront, which is quite difficult to do from a tax context because we have to go through the process.

Mr Cranston—I would also add that probably our expertise in this area would be limited because we have not exercised those powers as an agency ourselves.

Mr HAYES—Thank you.

CHAIR—My colleagues might be able to correct me on this, but I think the Federal Police this morning said they find the tax act a far quicker means to effect justice than the proceeds of crime legislation. Is that your experience as well, Mr Cranston?

Mr Cranston—Again, it depends on the factual situation. The tax law is looking at a particular tax liability. On balance of probabilities, looking at the facts, we can make an assessment of whether there is a tax liability. We have done well in that particular area in the past in dealing with some of these organised groups. There is a problem in relation to collection, however. Sometimes it is very difficult to collect on those particular assessments.

In relation to whether it is better than the proceeds of crime legislation, I think that would depend on the particular matter and the particular circumstances. When we raise tax assessments, they have to adhere to the various taxation acts. However, the proceeds of crime is because you have to have a criminal offence and that becomes sometimes a bit difficult.

Mr Zdjelar—If I can add to that, there are occasions when that process can be thwarted by those we are pursuing and there will be circumstances where there is structuring, going into bankruptcy, putting the asset out of the reach of the commissioner in an offshore jurisdiction, and that is where we see the potential for POCA and that is where it has been used as opposed to going down the tax path in some special circumstances.

Ms LEY—Given the involvement of accountants and promoters in tax avoidance schemes, and of course they are promoted to those who take them up as tax minimisation schemes and there are sometimes legitimate reasons for investing offshore to minimise tax et cetera, do you think the penalties are appropriate? Could you comment on those penalties for those who really do initiate and promote schemes? I am well aware that ignorance is no excuse in the eyes of the law, but the average person who takes them up would really have no hope of understanding the intricate nature of those schemes.

Mr Cranston—The penalties can range depending on whether it is a promotion of tax avoidance schemes as opposed to tax evasion schemes. We have our promoters penalty legislation, which is predominantly in the tax avoidance promotion schemes. These particular powers are new to the tax office and we are learning how successful they are going to be in a deterrent sentence. Basically they can ask promoters to take some voluntary undertakings about stopping formation of the schemes. We can get injunctions to stop them operating and the route is some strong monetary penalties that can follow as well. In relation to promotion of tax evasion schemes were the promotion of tax fraud can become a criminal matter, and again you are now moving on to a different different Criminal Code administration and the penalties for those are a matter for the courts. In relation to tax shortfalls, we have our own regime in dealing with tax shortfall penalties and potentially the deliberate evasion the penalty can be up to 75 per cent.

Ms LEY—Was not so much I appreciate your answer but do you think the penalties for accountants and the financial brains behind such schemes are appropriate?

Mr Cranston—I think the penalties framework is there. The administration and what we learned from using those penalties I would be in a better position later to be able to give you an answer there.

Ms LEY—As representatives we often hear from constituents who have been caught up in schemes and often the action that the tax office has taken as being has been, in their eyes, quite aggressive and Draconian and has not recognised that they were unable to detect that this was such a bad thing. I know the alternative view is that you went into this with your eyes open. We could look too good to be true, it probably was. But do you have a comment on the rather strong penalties that can be imposed on just the many people out there who actually invest in the scheme?, compared to those who promote the scheme?

Mr Cranston—You are talking about participants in tax avoidance schemes?

Ms LEY—Yes, if you want to describe them as such. That is what they are but they may have received a 75 per cent penalty and ongoing interest charges which are very high that have added up to enough to send them bankrupt over the years, for something that was promoted to them by their trusted local accountant as an investment and superannuation for the future. You could understand how they would accept that it was.

Mr Cranston—The ATO is being very proactive in trying to alert to the community about potential schemes that are being promoted. We have taxpayer alerts and we try to get them out as quickly as we can to alert the community. That is one way in which we are trying to say to people, ‘Don’t get involved in particular schemes that may be not accepted by the ATO.’ The other matter in relation to schemes is that they should seek a product ruling. We encourage

participants in schemes to ensure that the ATO has given a ruling in relation to particular schemes to give them the certainty that what they are getting involved in is something that the tax office will not be concerned about. Those are two important things that we do as an organisation. I think this will always be something that the ATO cannot take lightly, because there are people out there who do get involved in particular schemes at different levels of what we would call acceptance. Some are very aggressive. It is just something that needs to be tidied up so that the ATO can, as I said, give that particular ruling. That is probably all I could really say on that matter.

Ms LEY—I have a final question. How have the cuts in the recent budget affected the compliance area of the ATO? We understand that to investigate this type of activity is extremely resource intensive.

Mr Cranston—We have all been subject to the cuts of other agencies. Of course, we could do more if we had more resources. With the particular resources we do have, we just use risk management approaches and apply them to the highest risk areas. As I said before, more resourcing would help us in getting more coverage in a lot of areas. We have had a recent investment in income tax which is going to help us achieve coverage across a number of our markets.

Ms LEY—What does that mean: investment in income tax?

Mr Cranston—Income tax investment initiatives, which will provide more compliance work across most of our markets—from individuals, from small and medium enterprise markets to our larger markets.

Ms LEY—Are there any particular projects or proactive action that you might have taken, not responsive to something coming in but something you might have investigated as a section, that you are now not doing because of budget cuts?

Mr Cranston—I probably could not comment on the whole of the ATO in relation to that.

Ms LEY—No—just the compliance section that you are in charge of.

Mr Cranston—I think we have used some risk management approaches to the extent that we will look at a particular project—how far we will look at and investigate risk areas in a particular project. We have had to revisit that and make an assessment on still trying to get the strategic intent of a particular piece of work but taking into account the resources that we have to do that.

Ms LEY—Thank you.

Senator POLLEY—There has been a lot of discussion today and in other places in relation to Project Wickenby. From your point of view, do you see that project as being successful?

Mr Cranston— I believe Project Wickenby has brought together five agencies with one outcome. I think it has been successful. If you look at some of the voluntary compliance, people have come to the ATO and disclosed their involvement in tax havens. I have got some of the figures here if you would like me to—

Senator POLLEY—You could table those or take it on notice to provide them.

Mr Cranston—We will take it on notice. We have had conversations with a number of advisers and there has been a lot of media exposure by a number of experts in this area who have basically said that Wickenby has been successful in changing people's behaviour in entering into abusive tax evasion schemes. There is probably a third level: we monitor the tax performance of people that have been involved in Wickenby after the year that they have been involved, and there has been significant improvement in their voluntary compliance levels.

Senator POLLEY—In relation to the increase generally within the community—and, I guess, globally—of identity fraud, what sort of challenges does that present to the Taxation Office in relation to organised crime?

Mr Cranston—I think some of the challenges in identity fraud are to do with what systems we need in place to deter or identify particular refunds that are going out from the ATO, without affecting the broader community. We try and get refunds out in a timely manner, but often identity fraud requires us to inquire about particular refunds or use analytics to identify patterns which may show a particular refund is a result of somebody with a stolen identity. That is one challenge. Another challenge is to actually identify the particular perpetrator using the false identity. A third challenge would be our requirements in getting tax file numbers and ABNs as to what type of proof of identity we require—again, not at the expense of the broader community. Mr Barlow might want to add something.

Mr Barlow—I just want to reiterate that it is finding the correct balance between facilitating commerce and allowing people to get their refunds as quickly as we can. Obviously, that comes into conflict when we want to apply a greater level of verification, and that, by the nature of things, slows things down. So we have to try and balance that as best we can. Some fraudulent refunds will always get out. We just have to get that balance as appropriate as we can.

Mr Zdjelar—This probably goes to the first question, about difficulty in prosecuting and taking matters forward. With identity takeover, obviously, someone's identity has been compromised, and they come back into the tax system as that person, so the system engages with them quite readily. Obviously, the use of information technology—computers and the like—also poses particular problems for us and, with the internet the way it is now, you can actually be offshore negotiating these transactions as well. So there is a lot of work that has to be done in managing that. It is a global risk and we play our part in it. We have a significant data mining capability, looking for attributes of identity fraud and cases that might be coming at us and particular attacks on our control environment, and we continually monitor in that space to make sure that we are picking them up.

Senator POLLEY—Do you have any evidence that there is organised identity fraud perpetrated to evade taxation or for the purposes of money laundering?

Mr Zdjelar—I think we have seen some examples of identity creation or identity takeover within particular communities. We have seen some evidence of that, and it poses particular challenges for us.

Mr Barlow—This is another area where we do work closely with other law enforcement agencies. Again, as I was saying about tax havens before, identity fraud is probably another example of something which facilitates a whole range of different types of crime. Just as it is used for tax fraud it is obviously used for credit card fraud, and other criminal enterprises are founded on the abuse of identity. So there is a lot of good in working together with other agencies.

Senator POLLEY—Obviously you work very closely with AUSTRAC. Are there any loopholes in the legislation that need to be closed as far as money laundering is concerned?

Mr Zdjelar—Just in relation to money laundering, some of the tax havens do not recognise tax evasion but they do recognise money laundering, so it has actually been quite a good piece of legislation for us in terms of dealing with some people in that regard.

Mr Cranston—Again, our primary focus is to deal with the tax fraud. As to money-laundering charges, the criminal investigations around money laundering are done by other law enforcement agencies.

Senator POLLEY—In relation to an industry that circulates a lot of cash, for instance, there would obviously be implications for the potential not only to launder money but for fraud as well. Your department would work integrally with the other law enforcement agencies in keeping track of that—would that be right?

Mr Cranston—Basically we do. We work very closely in the particular organisation structures and look very closely at the flow of funds, of course. At other times we have provided tax technical expertise on a secondment basis to other law enforcement agencies to provide some of that financial, taxation, commercial and, at times, legal expertise to deal with some of those matters.

CHAIR—Thank you very much, gentlemen, for coming along this afternoon.

[3.16 pm]

HUNT-SHARMAN, Mr Jonathan, President, Australian Federal Police Association; and Vice-President, Police Federation of Australia

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

CHAIR—I welcome representatives from the Police Federation of Australia, Mr Mark Burgess and Mr Jon Hunt-Sharman, as our final witnesses for today. I invite you to make a brief opening statement, at the conclusion of which members of the committee will ask you some questions.

Mr Burgess—Thank you for the opportunity to appear before the inquiry. We have had an opportunity to read a number of the submissions to the inquiry as well as some of the transcripts from earlier hearings that you have had. Today we would like to pick up on two key points that we have ascertained from those transcripts and submissions.

Firstly, what we see, and have picked up in our submission, is the actual lack of consistency in legislation across jurisdictions. Having read some of the transcripts, it appears that not only is there a lack of consistency but there is a lack of agreement about how we develop some model laws to go forward, which is certainly a concern to us. Incorporated in that is the issue of unexplained wealth, which we have picked up from some of the questions that have been asked by the committee itself. Secondly, we also believe there are a number of areas where there are current shortcomings in federal legislation, and Jon will particularly pick up on those issues.

As a result of those observations, we want to make four recommendations to the committee, which we have just handed up. Would you like me to read those onto the *Hansard*?

CHAIR—We will accept them.

Mr Burgess—That is basically our opening statement. If you like, we could elaborate on some of those points or just take questions from the committee. We are in your hands.

CHAIR—Thank you. Mr Hunt-Sharman, did you want to say anything at this stage?

Mr Hunt-Sharman—Not at this stage, thank you.

Mr HAASE—For recommendation 1 that you have made—establishing a working group—can you outline how you see that would operate, having regard to the fact that in the past the police ministers council has proved determined to have a degree of uniformity in their legislation, but I do not think that has eventuated as yet. How would you see this working group actually proceeding?

Mr Burgess—It needs to be a group that is representative of all the jurisdictions, bearing in mind that is where the stumbling block appears to be in views about what type of legislation is required. In our original written submission we actually talked about the process of using the

Standing Committee of Attorneys-General as a possible avenue, and obviously you have just raised the issue of the police component of the Ministerial Council for Police and Emergency Management.

I suppose what we believe is that, to actually progress this in a way that is going to be meaningful to all of us, it is incumbent upon us to actually set up a working group that can actually deliver what we after. That is not to say that some of those other committees could not, but we need the right people around the table. We need the right goodwill to try and achieve what we are setting out to do. We need people with the relevant experience and expertise in those areas. As we said, that group would look at and talk to relevant stakeholders, and we have raised a number of those in the submission: the DPP police jurisdictions, the employee organisations—and, obviously, the wider community is going to need to be consulted. You talked to people from the tax office earlier. There is a whole range of those that need to be involved in the process. But to actually get it to happen, we need to clearly identify the appropriate people to be part of the working party.

Mr HAYES—You have probably seen from the evidence so far that many of the Police Commissioners and representatives appearing before this body have had quite disparate views about what sort of legislation should go forward. Perhaps their views reflect to a certain extent the—dare I say?—political masters in those states and territories. As far as having this as a genuinely representative body, how do we get to the true police professionals, if you like—those who are responsible for the day-to-day operation of these laws? I imagine that the same people are frustrated by the levels of inconsistency between state and territory application of law.

Mr Burgess—I suppose the one real way to do it is through MCPEM, the Ministerial Council on Police and Emergency Management. Bear in mind that you would then ensure that you had buy-in from the respective police jurisdictions. With all due respect, a recommendation from this committee will not necessarily compel a state jurisdiction to be involved in such a process. For us, it is disappointing that we have not got that consistency regarding a matter that is so important to policing and to the whole of the Australian community—serious and organised crime. Jon Hunt-Sharman and I specifically talk from the police professionals' perspective. We think it is somewhat of an embarrassment for our profession that we have not been able to get to that stage.

Mr Hunt-Sharman—We certainly see the Commonwealth as taking the leading role in this body so that it can consult with the other jurisdictions but can also start creating the model legislation. Of course, if it is enacted at the federal level, it can be used by any constable of any police force because federal legislation is not limited to what police force you come from, as you know. That is a starting point. If you can get agreement or at least majority agreement, some model legislation will be put in place for that to be adopted by the other jurisdictions.

Mr HAYES—I think we saw some success with the DNA database being initiated and facilitated federally and then being mirrored in each state and territory. Is that the style of approach and process that you think the Commonwealth should have buy-in in leading towards uniformity of serious and organised crime legislation?

Mr Burgess—Jon is right. Our mantra is: we are not asking the Commonwealth to take ownership of a whole range of things in policing, but we are asking the Commonwealth to take

some leadership. I think it really is the role of the Commonwealth to do that and to try to encourage the states and territories to come along. Of course, we talked about a working group because it puts it to a level in our organisations where the right people with the right expertise who have the ear of senior police, at least, can talk authoritatively on behalf of their jurisdiction. They should ultimately be able to come up with something, at least through the initial process of reviewing all the current legislation, that looks at international best practice and specifically reviews the South Australian model—because that is what is being discussed by a lot of people. Is that the perfect model? We do not have an answer for you on that. What would be the ideal model for us to implement across all about jurisdictions? We need the right police—the right people with the right skills—to be able to do that sort of role.

Mr HAYES—Do you say the same thing in relation to unexplained wealth legislation?

Mr Burgess—We think unexplained wealth legislation can very easily be picked up in this process. It is in several states now. It is operating very effectively. It is certainly a good tool. For example, it has been used very successfully in the Northern Territory. I know some people may have some concerns about aspects of it. In line with that, the committee would probably be aware, particularly from the Commonwealth's perspective, that we have previously argued and suggested to government that it would be appropriate for some parliamentary oversight of the AFP. If you as a committee were talking about moving down the road of strengthening those sorts of laws in the Commonwealth then you would have our support in that process obviously but you would also have our support for the process of oversight of the AFP, so that would be about how some of that legislation was used.

Mr HAYES—I suppose we have increased the powers significantly of the AFP, particularly in how the AFP can liaise with other jurisdictions. I think you are right that at this stage they do not come under the same parliamentary oversight as, say, the ACC.

Mr Burgess—That is right. Just getting back to unexplained wealth, our understanding is that the Northern Territory legislation is working very well. It is pretty much modelled off Western Australia's but, as we understand it, it is somewhat more simplified. There is a reverse onus of proof. As I understand it, on many occasions when people are brought in for questioning about unexplained wealth, rather than implicate themselves in more crime, sometimes these things are not even contested. There is no criminality attached to it, if you understand that. I think there are some great opportunities in this to use some specific pieces of legislation that can go a long way towards fighting serious and organised crime in this country.

Mr Hunt-Sharman—As Mark said, we have already got unexplained wealth legislation in Western Australia and the Northern Territory. New South Wales and South Australia are now talking about introducing unexplained wealth as amendments to their legislation. Queensland are looking at reversing the onus of proof in regards to unexplained wealth because they have already got it in their legislation. It seems to us it is an ideal opportunity to bring in a modelled piece of legislation because everyone is going down that path right now. Some are already there and some are on the way.

We can go back to the fact that the Commonwealth is the signatory to the convention against transnational crime. It has also agreed with the 1997 Interpol General Assembly which has recognised unexplained wealth as a legitimate subject of inquiry for law enforcement institutions

in their efforts to detect criminal activity and, subject to fundamental principles of each country's domestic laws, legislators should reverse the burden of proof in respect of unexplained wealth. At the Commonwealth level we have not got unexplained wealth legislation, yet here we are signing up to these conventions and so forth.

Mark raised it earlier, but we ask why unexplained wealth declaration is so effective. Do Australian police know who is involved in organised and serious crime in Australia? Do we know who they are? The answer is yes. Can we prove beyond reasonable doubt that these criminals are involved directly in those crimes? The answer is no. Are we aware that these criminals possess or have effective control of unexplained wealth? The answer is yes. Can these criminals or those holding the assets and wealth for these criminals explain on the balance of probability that they legally obtained that wealth or assets? The answer is no. We do not have to link anything to a crime. It is about them on the balance of probability explaining that they have got legally obtained wealth.

Again, the reality is—and I am sure this has come out from other witnesses—when you are talking about organised crime it is almost impossible to charge anyone. We have not got any legislation in Australia to deal with that at the Commonwealth level. There are big issues with conspiracy. That is the only charge available at the federal level that can try to pick up an organised crime syndicate. Of course, one of those individuals in the agreement has to have done an overt act in regards to the crime.

If you are talking about the Mr Biggs sitting behind the scene, the ones planning and financing these things, there is no connection. At the other end, where you have, if you like, the workers—the people who are involved in the criminal activity at the lower end—they are not aware of the conspiracy and they are often doing one specific criminal task or they are doing what would be seen as low-level tasks, but the reality is that is making up that whole criminal syndicate, and they do not get charged. So we have clearly got a problem there.

One of the real concerns, if you take the Bali Nine, we do not have any offence in federal criminal legislation to cover recruiting, either by servitude or through monetary bondage. In other words, if someone owes money to the syndicate or if they are a drug addict, being the couriers to bring the drugs in, there is no offence sitting over here to be able to charge someone at a much higher level with regard to penalties for recruiting those people. To some extent they are victims as well, if you are talking about when they are being trapped into carrying out these acts.

We get back to the issue of unexplained wealth. The bottom line is that we know these criminals have got the wealth in different locations with different people. There is a lot of intelligence and data held by police with regard to these organised crime groups. Unexplained wealth is the easiest way as a crime prevention method to stop further crime, because, if the individuals who are holding onto these assets cannot explain them, as Mark said, the tendency is to just hand it over because they do not want to get into a debate about whether they are involved in criminality or not.

Ms LEY—You suggested in your submission that there are difficulties in the sharing of information between the ACC and the states. Could you expand on that a bit and how you think it might be able to be improved.

Mr Burgess—Again, it comes back to the notion of a greater synergy across all of our jurisdictions. If there is one thing that committees hear from us when we come here on a whole range of fronts it is the frustration about how we make those sorts of things work—how we have seamless transitions between state and federal on a whole range of fronts, including laws and the sharing of information. That is a big challenge for us. We have grown up in a jurisdictional mentality, if that makes sense, but the world is now a small place. So I think it is incumbent upon us to ensure—and certainly your committee has got some ability to do this—that there is a greater, as I said, synergy between the ACC, the states, the AFP and also the Northern Territory. That is not to suggest it is not there. Please do not take me wrongly. I am not saying it does not happen, but we often hear that there are some issues about coordination and cooperation at times and information sharing across jurisdictions.

Ms LEY—Are you comfortable with the level of investigative power of the ACC and the quality of the investigative process, given that it is not conducted by sworn police officers?

Mr Burgess—We have a view—

Ms LEY—Or in their presence—in conjunction with them, not necessarily by them.

Mr Burgess—We are quite interested in some comments that were made recently by the Minister for Home Affairs about a review of the ACC. I am not sure where that it is up to at this stage. We certainly would have some comments about how that should be undertaken.

Ms LEY—Just on that, what would you like to see in the terms of reference?

Mr Burgess—We actually have not devoted any time to that. I will go back to your issue about the sworn police. When we made our original submissions in 2004, I think—NCA to ACC days—we were quite up front about the issues about having proper sworn police trained, effective police officers fulfilling those functions, seconded from state, territory and Federal Police agencies, to fulfil those roles. I could go into another debate which I have only just left in Sydney about the professionalisation of policing and the training that is required for someone to fulfil those sorts of functions.

We have some concerns that not all of the functions of the ACC are being carried out by sworn police officers. You will recall that last year or the year before there was a proposal for some legislative amendments with respect to search warrants at the ACC whereby, whilst a sworn officer would have to take out the search warrant, they could give the search warrant to a non-sworn person to execute. We had grave concerns about that. That aspect of the bill was removed. Getting back to the terms of reference, they are a number of the areas that we would like to talk to the government about—about how we make sure that the ACC is the effective body we always wanted it to be and, I think I can say on behalf of the rest of the Australian community, that it deserves to be.

Ms LEY—Do you have any comment to make on how the latest round of budget cuts has affected the ability of the AFP and police forces generally to carry out their tasks?

Mr Burgess—I would not talk on behalf of the AFP. We have not had any specific feedback at this stage from the ACC, but I am assuming that like everybody else they have had cuts; I have

not actually had that conversation with the ACC. In the current climate, I suppose, most of us are going to have to tighten our belts in some way, but we have to be mindful that we do not restrict the important activities of the ACC. That is one of the responsibilities that I would suggest this committee has.

Mr Hunt-Sharman—With regard to the Federal Police, it has had a major effect. We certainly are of the view that the efficiency dividend should not relate to operational matters and should relate to the administration of the organisation. The difficulty with the approach that has been put in place is that the AFP has been, for want of a better word, an efficient machine for some time. It is hard to keep on taking cuts to the organisation when you have moved into a very efficient model in the first place. So my only recommendation there would be that, if there were consideration, we would certainly be accepting of a halfway model, if you like, that has the efficiency dividend with regard to the non-operational side of the AFP.

Ms LEY—Are you comfortable with the timetable of delivery for the 500 new officers?

Mr Hunt-Sharman—We certainly are. These are difficult times, and we realise that. Fortunately the government, when allocating the funding, budgeted into the latter years because there was concern about the future economic environment. It is certainly our view that in a few years time things should be back on track and it will be the right time for the extra numbers of sworn police officers.

Mr Burgess—Like everybody, we would have liked it upfront, without a doubt, but we accepted the arguments given by the government at the time.

Mr WOOD—With the budget cutbacks, I have heard privately, and today we had confirmation from the ACC, that as part of these cuts a number of their staff members who were sworn members of various police force agencies have had to go back to their various state jurisdictions and that there have been morale issues and issues where investigations have been put on hold and other investigations have not even been looked at into the future, simply because of the workload. Are you saying you have not heard anything from any state members complaining about being recalled?

Mr Burgess—At this stage, that is the first I have heard of that. That is of concern to us because our view has always been, as I think you would be well aware, that the model that we put forward was a model that by and large staffed the ACC with properly trained, accredited, sworn police officers from the jurisdictions, for a whole range of reasons, not the least of which was to enhance their skills that they could take back to their home jurisdictions over time. But, if they are now sending state police officers back to their home jurisdictions due to budget cuts, I suppose the question would be: who is actually fulfilling the function within the ACC? That is a concern to us, and certainly it is an issue that we will take up when we leave here.

Mr WOOD—That is the situation. The evidence we have received has been of 50 positions being cut, not necessarily all members going back to state jurisdictions. At the same time, I will direct the question to Mr Hunt-Sharman regarding the AFP. There has been talk today of redundancy packages offered. Have you heard how many of those have been offered? What has been the effect on tackling ongoing and serious organised crime?

Mr Hunt-Sharman—To answer your question, I am not the AFP, but I can give you my knowledge. I think there have been about 150 redundancies. Out of that number, I think probably around 60 were serving police officers. So when we talk about the issue of future police numbers as in the 500 net additional police, we are already 60 down and, of course, a lot of those were experienced police officers. But, again, the books have to be balanced and that is the outcome. I reiterate that I think if we can move to the efficiency dividend not covering operational areas of the AFP it would assist.

Mr Burgess—There were no forced redundancies in that figure.

Mr WOOD—No, that is the evidence being—

Mr Burgess—But you raise a valid point. We are very conscious of AFP numbers and we have been for some time, particularly AFP sworn numbers. We will be, I guarantee, holding the government to account on sworn numbers in the AFP.

Mr WOOD—I suppose this is a loaded question because I know the answer already. If you have an ongoing investigation where you are taking investigators away from the investigation to go back to state operations, what would be the morale problems and the investigative problems of losing that experience on that particular investigation? What would be the outcome of that?

Mr Hunt-Sharman—With the Australian Federal Police, obviously we have another problem. There were additional functions added on to the AFP particularly after September 11, 2001. We became thin in numbers with regard to what I suppose you would call the traditional crime types—the narcotics and fraud investigations, organised crime investigations and so forth—because we also had to pick up a lot of the national security issues and also regional issues with the International Deployment Group. As an organisation, we have been, if you like, catching up on the extra roles that the organisation was given. So the government's commitment for the additional 500 is for them to go into the national investigative areas covering fraud, drugs, people smuggling and so forth. With regard to our numbers, if you take away the ACT policing numbers, the International Deployment Group numbers and aviation and protection, you start to get down to a very small number of people who are actually there doing investigations into major criminal organisations and groups.

Mr WOOD—With regard to the cutbacks to the Australian Federal Police, do you have a dollar value for the cutbacks? We were talking about efficiency gains of two or three per cent. Do you know how many millions of dollars that is?

Mr Hunt-Sharman—No, I do not have the figures on that.

Mr Burgess—Part of the concern that we have always had with this and why we lobbied for the additional police in the AFP was the knock-on effect that it has to the states. The states, for example, as you are probably aware, are in essence carrying out the community policing function at the 11 counterterrorism airports. So the 300 plus police that are there, albeit in AFP uniform, are predominantly state police. There is also the assistance that is given with respect to the IDG. I think there is in excess of 100 state police in the IDG. We are not opposed to all this stuff, but the knock-on effect actually hurts the states. So particularly in the area of airports we have said that that is a responsibility of the Commonwealth that should be done by the AFP. The

states should not have to be providing the surge capacity for the AFP. So further cutbacks are going to exacerbate that problem.

Mr WOOD—Have you heard about budget cutbacks for air marshals?

Mr Hunt-Sharman—I cannot comment on that for a number of reasons—I am not the AFP.

Mr WOOD—I was just asking in general, but thank you.

Mr Hunt-Sharman—There is certainly a general rumour in the media and so forth that there are cutbacks.

CHAIR—We have had the benefit of speaking to a number of senior and junior officers in the conduct of our inquiry, and a number of bits of discussion have been about the South Australian legislation. There is no uniformity amongst the forces across the country about whether this will be effective or not. In fact, the Victorian police are quite adamant it will not be effective. Other forces have said that it will displace biker groups out of South Australia to other states, and there seems to be a bit of evidence that it is starting to occur. Does the federation have a view on the South Australian legislation?

Mr Burgess—We do not at this stage. We are getting a full presentation on that ourselves next week because it is obviously of interest to the other respective jurisdictions. If I can go back, I suppose the disappointing part for us is that it appears the responses by the various jurisdictions are somewhat piecemeal, that individuals are having dialogue with South Australia and making determinations as opposed to what we are suggesting, which is to get a collective group of people from all across the jurisdictions to look at those areas in totality and try and come back with what is the best and most workable model for all of us. You are right. Potentially, if no-one else enacts any legislation or anything that has any teeth—and the South Australian legislation is now in place—then it has a potential to displace. That is probably only natural, and some states could suffer as a result of that. So whilst we do not have a specific view on the South Australian legislation, we are in the process of having a full presentation given to us next week about that and hopefully we will be far better placed to make more informed comment.

Mr Hunt-Sharman—One important thing is that when you are looking at the convention against transnational crime, the fact is that it is talking about organised crime. It is not talking about outlawing motorcycle gangs. The Commonwealth has ratified this legislation and when you are looking at some of the comments from witnesses, with respect, they have simplified what the organised crime groups are into—what they see, hear and fear. In actual fact, the organised crime syndicates in Australia are far more complex, far more covert, far more sophisticated, and as far as we are concerned the eye has gone off the ball in one sense. This is about whether we have proper legislation in place to fight organised crime groups in Australia—and at the Commonwealth level we have not.

If you look at the organised crime syndicates in Australia, the majority of them are involved in transnational and national activities across borders. If you look at what for the general public are the most transparent organised crime groups in Australia, a good example is the ones that are involved with illicit drug importations and supply of illicit drugs. But probably the most covert and non-transparent lot, as far as the public is concerned, are white-collar organised crime

syndicates. Corporation crime is an interesting one because, even from the previous witnesses, there is almost a tendency that these mistakes are made honestly by people in regard to their business activities, that somehow they did not realise they were defrauding or whatever. That might be true for some—even for the majority of people—but the reality is that white-collar, organised crime groups are using corporations as the weapon to commit the crime, so you are looking at not just committing frauds but also the concealment of the illegal profits. You have the legitimate companies being used as the supply chain for the illegal goods, so the corporation itself is a vehicle of crime.

If you start looking at white-collar crime or organised crime, the reality again is that we have problems with our legislation. If you speak to ASIC, ITSA or the AFP, drug importation and corporate crime are federal crimes, but our legislation is built around individual criminals doing something wrong, not a crime syndicate or a criminal enterprise.

It is well-known that there is a model out there involving corrupt lawyers, accountants and financial advisers. I am not talking about the banking world; I am talking about those where they are borrowing money at high interest rates because they cannot get loans anywhere else. Organised crime is right into these finance groups. What happens is that the individual goes along and is told, 'Invest with us,' or: 'We'll loan you the money. Yes, it is a high interest rate but don't worry; we'll balance that with taking a portion of your profits.' They will create this thing but they will say, 'Don't just trust us; you go and get an accountant to have a look at it.' They target people who will say, 'I haven't got an accountant at the moment.' Then they say, 'We've got one for you. Go and see so and so.' So they go to that accountant and that accountant tells them: 'You have to get legal advice on this. It's good, so go and get some legal advice.' So they go and get legal advice from another person who is part of the criminal syndicate. The result is that these people lose their property and their businesses to the organised crime syndicates. They use standover tactics to get money that is owed and then the assets are seized by these criminal enterprises. It is insidious.

The reality is that that is the true type of organised crime that is also out there. Bikies may be used to assist them but, again, it is higher level organised crime. The point I am making with regard to organised crime legislation at the Commonwealth level is that there is none, we need it and there are ample examples of the areas we are talking about—drug importation, drug supply and, of course, corporate crime. You have only to look at what is happening in America at the moment. There is ample evidence that there is significant fraud there as well. It is something to be wary of. It happens in Australia a lot, and I can talk about that later.

CHAIR—You were saying that people are targeted. Are there particular industries that are targeted, such as real estate, transport or customs brokers?

Mr Hunt-Sharman—What I have seen from some of these syndicates is that they pick on the sick, the weak and the greedy. I think there is logic behind that. It is about them not getting in the box to give evidence against them later down the track, or, if they do, they will be a poor witness for whatever reason. A lot of these people are desperate—they have their own small business or their own property and cannot cover a mortgage—so they borrow from these groups, which look, on the face of it, as if they are legitimate financial businesses but in actual fact are just a front. They either will have people put money in by borrowing or actually get people to put money into these businesses as well. Next minute the business goes insolvent, there are no assets

there, the individuals have not got the money to chase it in court and, of course, you cannot follow the link. This is why I mentioned ITSA and ASIC.

The problem is that you have to try and follow the assets in regard to that legislation. If it is going into trusts, if it is going overseas into a tax haven and then back, as in the process of money laundering, you cannot identify it for the purpose of a charge. The end result is going back to the unexplained wealth argument. We know where these assets are. They are just sitting with other people or they are sitting in family trusts. But this is where these organised crime groups are.

They are not nice people. I have got an example. I am not going to name the individual but I want to give you an idea of an alleged organised crime figure in Sydney. I am quite happy to hand up some newspaper articles and some public reports from ASIC on this person. The alleged organised crime figure in Sydney is suspected of using an outlaw motorcycle gang member to blow up a property. He is convicted of assault and suspected of organising other assaults for extortion purposes. He is convicted of the heroin supply. He is suspected of cocaine supply. He is suspected of money laundering of millions of dollars. He is suspected of having a witness murdered the day before court. He is subject to multiple bankruptcies and subject to multiple deregistration of companies of which he has had effective control. He has been subject to multiple deregistration as a director. He is currently suspected of extorting $1 million from one person and $15 million from another in two separate cases by threatening to kill the victims and the children and the wife. What is the person still doing? He is still there. Other companies are now running in place of the ones that existed before. He sees himself as untouchable from the police. One of the comments that he has made publicly goes along lines of: 'I have been in jail. I have been bankrupt. But the cops and the authorities will never get me because I have got deeper pockets than them. I have always owned two Rolls Royces, one a convertible for the sunny days.'

CHAIR—If you could hand up that information that you have offered, it would be welcome.

Mr Hunt-Sharman—It just gives you a general idea of what these people are like. They operate at a different layer and are very covert in their activities. I have probably spoken enough on that.

Ms LEY—It would not just require federal legislation about organised crime; it would require ASIC and ITSA related white collar reform to that legislation as well? Or do you think that there could be an ability to bring back what you have just described under a head of power for organised crime federally?

Mr Hunt-Sharman—Yes, particularly after the UN Convention against Transnational Organised Crime, to which we are signatories. We need specific organised crime legislation, hopefully including unexplained wealth amendments to the Proceed of Crime Act, to attack these groups because the current legislation does not cater for the way an organised crime syndicate works.

CHAIR—If there are no further questions, thank you very much for coming along today. We would welcome the federation's view on the South Australia legislation when you get one. I

would like to thank all the witnesses who have given evidence today. The next public hearing of the committee will be tomorrow in Brisbane.

Committee adjourned at 3.58 pm